

SAN DIEGO COUNTY SUPERIOR COURT RULES

Revised January 1, 2004

DAILY JOURNAL CORPORATION

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SAN DIEGO COUNTY

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DIVISION IV**SECTION ONE: PROBATE RULES****CHAPTER 1
DEPARTMENTAL
ADMINISTRATION AND
ORGANIZATION****Rule 4.1****Address, Phone and Hours for Probate
Examining Division**

San Diego Central Division:
Madge Bradley Building
1409 4th Avenue, 3rd Floor
San Diego, CA 92101

Probate Examiners:
Monday through Friday
1:30 to 3:30 p.m.
(619) 236-3781

Probate Business Office
Court Investigators
Monday through Friday
8:30 a.m. to 4:30 p.m.
(619) 236-3781

Vista (North County Division):
325 South Melrose Drive, Ste. 1200
Vista, CA 92083

Probate Examiners
Monday through Friday
1:30 to 3:30 p.m.
(760) 806-6150

Probate Business Office
Monday through Friday
8:30 a.m. to 4:30 p.m.
(760) 806-6150

In these rules, the Central Division and the North County Division will sometimes be referred to as "The Probate Court."

(Eff. 1/1/90; Amended 1/1/91; 7/1/95, Rev. 1/1/2000; Renumbered & Rev. 7/1/2001; Revised eff. 7/1/2003)

Rule 4.2**Venue for Probate**

Venue for probate cases is divided into two divisions, Central and North County (Vista). The East and South Divisions are included in the Central Division for purposes of this rule. Original petitions must show the proper venue and be filed in the

appropriate court, according to zip code, as defined in Appendix I-A of these rules.
(Eff. 1/1/90, Rev. 1/1/2000, Renumbered 7/1/2001; Revised 1/1/2002)

Rule 4.3**Change of Venue**

Requests for change of venue must be directed to the presiding probate judge of the court having original venue. The ex parte request must take the form of a declaration and be accompanied by the proposed order for the judge's signature.

(Adopted Eff. 1/1/90; Amended 7/1/95, Renumbered 7/1/2001; Rev. 7/1/2002)

**CHAPTER 2
PLEADINGS: FORM AND FILING****Rule 4.4****Backing on Papers Filed**

All wills and other testamentary documents submitted for filing must be attached to a blueback, the bottom of which contains the document's caption (title) which must be fully visible.

(Renumbered & Rev. 7/1/2001, Revised 7/1/2002)

Rule 4.5**Consolidation with the Lowest Number**

A. Whenever it appears that two or more petitions with different numbers have been filed with reference to the same decedent, conservatee or minor, the court will, on its own motion, consolidate all of the matters with the matter bearing the lowest number.

B. Where a complete consolidation of proceedings under the Probate Code is ordered, the clerk, unless otherwise ordered by the court, must file such consolidated proceeding and all subsequent papers relating thereto under the number assigned to the case which was filed first and therefore has the lowest number.

(Adopted, Eff. 1/1/90; Revised and Renumbered & Rev. 7/1/2001; Rev. 7/1/2002)

**CHAPTER 3
PLEADINGS: FORM OF PAPERS
PRESENTED FOR FILING**

Rule 4.6**Caption of Petitions**

A. If a fee is not required pursuant to the Government Code or Probate Code, it must be so indicated below the caption by stating "No fee pursuant to Probate Code Section 10501 and Government Code Section 26826".

B. The probate filing clerk is not required to read the body of the petition or the prayer to determine notice requirements.

(Eff. 1/1/90, Rev. 1/1/2000, Renumbered 7/1/2001, Rev. 7/1/2002; Rev. eff. 7/1/2003)

Rule 4.7**Filing Documents for Calendared Matters**

A. The hearing date, time and department are required on documents filed in connection with matters already set for hearing, and must appear on the first page of the document, below the caption.

B. In order to be considered at the calendared hearing, documents filed after the calendared petition must be filed directly with Probate Services no later than 12:00 noon, two court days prior to the hearing. Any document filed after the deadline will be considered "late" and may not be reviewed for the calendar hearing. No documents will be accepted for filing after 12:00 noon, the day of the hearing.

C. Form and Lodging of Exhibits. The foundation for exhibits submitted for the court's consideration must be set forth in appropriate declarations which must be filed with the court. However, if the exhibits accompanying a motion exceed ten pages cumulatively, they must be lodged with the court in accordance with E. below, rather than attached to the pleadings which will remain in the court file. Such exhibits must be lodged at the same time as the corresponding papers are filed with the court. Exhibits written in a foreign language must be accompanied by a translation certified by a qualified interpreter.

D. Accounting Format. Accounting schedules must be filed with the court and not lodged or attached as exhibits.

E. Lodged Documents. The provisions of rule 319 of the California Rules of Court regarding lodged material will be followed by this court. In the alternative, an attorney service pick-up slip may be submitted with the lodged materials. If the lodged material is not accompanied by either a stamped, self-addressed envelope or an attorney service pick-up slip, the clerk is authorized to refuse to accept lodged material. If the clerk is persuaded to accept the material despite non-compliance with the above,

the risk of loss is on counsel and it is solely the responsibility of counsel to arrange for retrieval of the material at counsel's expense within five court days of the date of the hearing. Papers not retrieved within five court days may be disposed of without further notice to counsel.

F. A Notice of Lodgment listing all of the items lodged shall be filed and served on all appearing parties at the time any matter is lodged with the court. The documents lodged with the court shall also be tabbed or paginated to correlate to the Notice of Lodgment. The Notice of Lodgment and the extra copy of the Notice will be filed stamped by the court. Following the return of the lodged documents by the court, the party lodging them shall retain them until the applicable appeal period has expired.

G. A document may be filed "by Fax" in accordance with Rules of Court 2001. However, the entire document must be submitted "by Fax" and must not be intermingled with original pages.

(Eff. 1/1/90; Amended 1/1/96; 7/1/96, Rev. 1/1/2000; Rev. and Renumbered 7/1/2003)

Rule 4.8**Use of Judicial Council Forms**

A. The latest version of applicable printed forms of petitions, orders and other documents approved by the Judicial Council must be used in all cases, unless otherwise permitted or directed by the court. If a form is inadequate for a given circumstance, an addendum may be attached to the form. When no applicable form has been so approved, counsel must draft their own documents following requirements for pleading format.

B. Appendix I shows a list of certain forms approved by the Judicial Council. Additional forms may have been approved since the date of printing the appendix and inquiry should be made if a desired form is not shown on the list.

C. When printed forms are reproduced on the front and back of a single sheet, the back sheet must be inverted ("tumbled") so that it can be read when clipped at the top in a file folder.

D. Counsel are cautioned that printed forms prepared by banks or others may not be acceptable for filing.

(Eff. 1/1/90; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002)

Rule 4.9**Affidavits and Declarations Under Penalty of Perjury**

A. A declaration must meet all of the requirements of Code of Civil Procedure, section 2015.5 to be acceptable in lieu of an affidavit and may contain the following language, whether executed within or without California:

"I declare [or certify] under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____ [date].

[signature of fiduciary]

[name of fiduciary]"

B. If such declaration is executed within California, it may take either the above form or the following form:

"I declare [or certify] under penalty of perjury that the foregoing is true and correct and that this Declaration is executed on [date] at [city], California.

[signature of fiduciary]

[name of fiduciary]"

C. Where a corporation is the fiduciary, the verification must be made by an officer on its behalf and should take the following form:

"I am [title of officer] of the petitioner in the above-entitled matter, and I am authorized to make this verification on its behalf. I have read the foregoing petition and know its contents, which are true of my own knowledge, except as to the matters that are stated on my information and belief, and as to those matters, I believe it to be true. I declare [or certify] under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on [date] at [city] California.

[signature of officer]

[name of officer]"
(Eff. 1/1/90; Renumbered 7/1/2003)

Rule 4.10

Complete Address in Petition or Report

Where a petition or report is required to include an address, a full and complete number, street, city, state and zip code for the person's place of business or place of residence must be set forth. Where the mailing address is a different address, it must also be included.

(Adopted, Eff. 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002)

Rule 4.11**Multiple Minors and Conservatees**

A. Where several minors share the same mother, a Petition for Guardianship may be filed under one case number and include all the minors.

B. Where a husband and wife are to be conserved, a separate Petition for Conservatorship for each may be filed under the same case number if the assets of the estate are community property. In all other cases, the conserved husband and wife must have separate case numbers.

(Eff. 1/1/90; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003)

CHAPTER 4 SETTINGS, ASSIGNMENTS AND CONTINUANCES

Rule 4.12**Calendar Settings of Probate Matters**

A. All petitions in probate matters which require a hearing will, upon being filed with the court, be set by the clerk on the normal calendar day.

B. Any request for early setting must be approved by the Probate Examining Department and will be granted only for good cause.

C. Calendar times in Central and North County Probate may be obtained by calling the Business Office at each location.

D. Calendar times are subject to change at the direction of the presiding probate judge. (Cross Reference: Contested Matters, rules 4.168-4.180.)

E. All petitions for appointment of a Personal Representative, Conservator or Guardian must be filed along with a completed "Duties and Liabilities" form.

(Eff. 1/1/90; Amended 7/1/95, Rev. 1/1/2000; Renumbered & Rev. 7/1/2001; Revised 7/1/2002)

Rule 4.13**Probate Hearing Once Noticed Cannot be Advanced**

When a hearing on a probate matter has been noticed, or when it has been noticed and then continued to a definite date, the matter cannot be heard before the date set, either by means of a new petition, an amended petition, or by a new notice.

(Adopted, Eff. 1/1/90, Renumbered 7/1/2001)

Rule 4.14**Continuances**

A. Any request for a continuance before the time of the hearing, must be made by or with the permission of petitioning counsel or a petitioner acting without an attorney. Continuance may not be granted after 11:00am on the date of the hearing, unless requested and granted through Telecourt as

stated at Rule 4.25 of Division IV (Section 1) of the San Diego Court Rules.

B. A one-week continuance will only be granted for good cause.

C. A first continuance of two weeks or more may be obtained by calling the Probate Business office.

After several continuances have been granted an appearance by counsel in court will be required.

D. Continuance policy is subject to change at the direction of the presiding probate judge.

E. A preapproved matter will be continued if an objection is made at time of call and counsel for the preapproved matter is not present. Counsel will be notified of the continuance.

F. Probate examiners have authority to continue the hearing date on petitions or other pleadings filed with the court. However, where responses or objections have been filed or where counsel asking for a continuance has reason to know another party or counsel may attend the hearing, such counsel must advise all such parties and counsel of the continuance at the earliest possible date so as to avoid unnecessary appearances, inconvenience and expense. (Eff. 1/1/90; Amended 1/1/96, Rev. 1/1/2000; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Rev. eff. 7/1/2003)

Rule 4.15**Setting Matters Already on File**

A. When a petition is on file but not set for hearing, it will be set by the probate calendar clerk upon request. The request must be in writing and a notice of hearing must accompany the request. A petition which has become out-of-date will be denied a new setting date and a new petition will be required to be filed.

B. If the matter was previously set and taken off calendar because of defects, the material necessary to correct the defects must accompany the request for setting. The request for setting may be refused without the corrections.

(Eff. 1/1/90, Rev. 1/1/2000; Renumbered 7/1/2001; Rev. 7/1/2002)

CHAPTER 5 NOTICES

Rule 4.16**Notices Generally**

Reserved for future Use.

(Adopted, Eff. 1/1/90; Amended, Eff. 1/1/91; 7/1/95; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Rev. eff. 7/1/2003)

Rule 4.17**Additional Notice Requirements**

A. Under the provisions of the Probate Code, the court may require additional notice in any matter.

B. Ordinarily, such notice will be required whenever it appears that the interests of any person may be adversely affected by the determination of the issues raised by the pleadings, such as when the status of property is to be determined or substantial fees for extraordinary services are requested.

C. The court may require notice in such cases to include not only the time and place of hearing but also a summary of the matters to be determined, or it may require a copy of the petition to be served with the notice.

D. The probate calendar clerk will prepare and post the notice as required pursuant to Probate Code Section 10308(c). The clerk is not responsible for publications or mailings.

(Adopted, Eff. 1/1/90, Renumbered 7/1/2001; Rev. 7/1/2003)

Rule 4.18**Proof of Service**

A. It is not sufficient in proofs of service by mail to declare that notice, etc., was mailed to the persons listed in the petition. Pursuant to Probate Code, section 1260 and Code of Civil Procedure, section 1013a, the court requires the proof of service to set forth the names and addresses of the persons as they appear on the envelopes.

B. In certain situations, the proof of service must show that notice was served by airmail, by registered or certified mail, by mail with a written acknowledgment of receipt of the notice, or by personal service.

C. To determine the proper procedure, counsel are urged to refer to the Probate Code provisions applicable to the petition being filed.

(Adopted, Eff. 1/1/90; Renumbered 7/1/2001; Rev. eff. 7/1/2003)

Rule 4.19**Notice Re Special Letters in Will Contest**

In the event of a will contest, a petition for special letters of administration will not be granted without notice to the surviving spouse, the person nominated as executor and any other person who, in the discretion of the court, appears to be equitably entitled to notice.

(Adopted 1/1/90, Renumbered 7/1/2001)

Rule 4.20**Notice to Persons Requesting Special Notice**

Notice must be given to or waived by any person requesting special notice, whether or not the matter is one for which special notice was

specifically requested. (Adopted 1/1/90, Renumbered 7/1/2001, Rev. 7/1/2002)

Rule 4.21**Notice Must Go to Actual Address**

Reserved for Future Use

(Adopted, Eff. 1/1/90; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Rev. eff. 7/1/2003)

Rule 4.22**Notice to Persons Without Known Addresses**

Reserved for Future Use.

(Eff. 1/1/90; Amended 7/1/96, Rev. 1/1/2000; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. eff. 7/1/2003)

Rule 4.23**Notices to Trust Beneficiaries**

If a personal representative is also the sole named trustee of a testamentary or non-testamentary trust, and the estate or any part thereof is to be distributed to the trustee of the trust, then notice must be sent to the beneficiaries of the trust. In addition, the names and addresses of the beneficiaries must be listed in the petition.

(Adopted, Eff. 1/1/90, Renumbered 7/1/2001, Rev. 7/1/2002)

CHAPTER 6 CALENDAR NOTES AND HEARINGS

Rule 4.24**Availability of Probate Examiner's Notes and Clearing of Defects**

A. Probate examiner's notes are available to counsel to determine if any defects in pleadings or procedure have been noted by the examiner.

B. The notes are available on the San Diego Superior Court website.

When the examiner receives additional pleadings and updates the notes, the new notes will ordinarily be posted to the website by opening of business the following day.

C. If counsel does not have access to the internet, he may request that the notes be sent to him by attaching a "Mail Option" form which is available in Probate Services, to the petition, with a self-addressed, stamped envelope or a messenger slip.

D. After checking the notes, counsel are encouraged to call Probate Examining with any questions counsel may have or explanations that may assist in the clearing of the defects. Counsel may also appear in person to confer with Probate Examining to clear defects. All such calls or meetings must be during the open hours of Probate Examining.

E. An appearance is required on all matters not preapproved even though there are no defects.

F. To correct defects counsel are required, at least two court days in advance of the hearing date, to supply to the probate examiner's office any additional documents or explanations necessary for approval of the petition without continuance. Any documents submitted "late" may not be examined before the hearing, and a continuance may be required. See Rule 4.7 of Division IV (Section 1) of the San Diego Local Rules.

(Eff. 1/1/90, Rev. 1/1/2000; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003)

Rule 4.25

Appearance of Counsel by Telephone

A. In the downtown San Diego court, if an uncontested matter has not been preapproved, counsel may appear by a telephone call to the probate judge on the day of the hearing between 11 a.m. and 11:30 a.m., or such other time as designated by the probate judge. The phone number for this "Telecourt" in San Diego is (619) 687-2023. Counsel must be on the phone line when the call is answered

B. In North County, if an uncontested matter has not been preapproved, counsel may appear by a telephone call to the probate judge on Wednesday, before the date of the scheduled hearing, between 4:00 pm and 4:30 pm or such other time as designated by the probate judge. The phone number for the "Telecourt" in North County is (760) 806-6060. Counsel must be on the phone line when the call is answered.

(Eff. 1/1/90; Amended 7/1/95, Rev. 1/1/2000; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003)

CHAPTER 7 ORDERS AND BONDS

Rule 4.26

Signature of Judge

An order or document on a matter requiring the signature of the judge must be submitted to the Probate Business Office for review before being presented to the judge. Orders may be submitted on or after the hearing date.

(Adopted 1/1/90; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003)

Rule 4.27

Material to be Included in Probate Orders

A. All orders or decrees in probate matters must be complete in themselves, in that they must set forth all matters actually passed on by the court, the relief granted, the names of persons, descriptions of property and/or amounts of money affected with the

same particularity required of judgments in general civil matters. The introductory paragraph must include the subject of the hearing, the date, time, department number, judge's name, and names of the parties and attorneys who appeared and whether the appearance was in person, telephonic, or that the matter was preapproved and no appearance was necessary.

B. Probate orders must be drawn so that their general effect may be determined without reference to the petition on which they are based.

C. In no case may any material appear after the signature of the judge.

D. At least two lines of text must be included on the page containing the judge's signature.

E. While in orders settling accounts it is proper to use general language approving the account, the report and the acts reflected therein, it is not sufficient in any order to recite merely that the petition as presented is granted.

F. Orders settling accounts must also contain a statement as to the balance of the estate on hand, specifically noting the amount of cash included in the balance.

G. All orders for distribution (including estates, conservatorships, guardianships and trusts) must contain the following:

(1) A list of the assets on hand;

(2) The dispositive provisions of any will which has been admitted to probate, set forth verbatim; or, in the event of intestacy, the heirs at law and their specific relationship to the decedent; or, in termination of guardianships and conservatorships, the person or persons entitled to distribution of the assets. The applicable terms of any assignment of interest, agreement for distribution, or decree determining interest in an estate must be fully set forth;

(3) A distribution schedule describing each asset and setting forth charges against distributive shares with sufficient clarity to enable each distributee to determine the net distribution;

(4) A provision setting forth the persons to whom any later discovered property is to be distributed; and the appropriate share they are to receive

(5) The fees and commissions allowed by the court.

(6) The following statement is acceptable as a finding of assets on hand: "The court finds that the assets described in the order of distribution comprise the entire estate on hand for distribution". (Adopted, Eff. 1/1/90, Amended, Eff. 7/1/91, Renumbered & Rev. 7/1/2001; Rev. 7/1/2002)

Rule 4.28**Riders and Exhibits**

No riders or exhibits may be attached to any order, except as may be otherwise provided on Judicial Council forms.

(Adopted, Eff. 1/1/90; Renumbered 7/1/2001)

Rule 4.29**Orders for Continuing Payment Must Have a Maximum Time Limit**

The court will not make orders for continuing payments to run "until the further order of the court". All such orders must provide for payments that must "commence as of _____ and continue for a period not to exceed _____ months or until further order of the court, whichever shall first occur".

(Adopted, Eff. 1/1/90, Renumbered 7/1/2001; Rev. 7/1/2002)

Rule 4.30**Application for Ex Parte Orders - Generally**

A. All applications for ex parte orders must be reviewed by Probate Examining before presentation to the judge. Examiners will be available just before the court's ex parte hours for making this review.

B. Any application for an ex parte order must be accompanied by a separate order complete in itself. It is not sufficient for such an order to provide merely that the application has been granted, for example, that the sale of property set forth in the petition has been approved.

C. Whether there are parties entitled to specific notice of any matter is not controlling as to whether a petition will be heard by the court on an ex parte application. Requirements of the Probate Code and policy of the court are determinative of whether a matter may be heard ex parte.

D. The court requires 24 hours notice to all parties entitled to notice. Every ex parte application must be accompanied by a written declaration of such notice or of the reason it was not given.

E. Filing fees must be paid and a case number issued before a party presents an ex parte application. This includes a petition for letters of special administration where no petition for probate is first filed and in those cases the ex parte petition will be filed to open the case and a conformed copy of that filed petition must be presented for the ex parte application.

F. All papers presented for ex parte consideration must be filed with the court irrespective of whether the relief sought was granted or denied.

G. Telephone the business office of the Probate Division for ex parte procedures specific to that location.

(Eff. 1/1/90, Amended 7/1/95; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003)

Rule 4.31**Matters Which May be Heard Ex Parte**

Matters which may be heard ex parte include the following:

A. Sale of securities;

B. Sale of depreciating assets;

C. Family allowance (First application before Inventory);

D. Guardianship and conservatorship investments;

E. Appointment of special administrator;

F. Appointment of temporary conservator or guardian, providing good cause is shown for the appointment without the required five days notice to the proposed conservatee and petition for appointment of general conservator or guardian is on file or will be filed at same time as the petition for temporary, see Rule 4.119 and 4.143 for further requirements;

G. Increase in bond;

H. Amendment of title of proceedings;

I. Authorization to enter into exclusive listing agreement for sale of real property;

J. Preliminary distribution of estate pursuant to Probate Code, section 11623 on proof that Inventory and Appraisal has been filed; and

K. Authorization to invest in units of a common trust fund.

L. Matters as allowed at the discretion of the court. The court will not hear contested matters in the absence of extraordinary circumstances.

(Adopted 1/1/90, Renumbered & Rev. 7/1/2001, Rev. 7/1/2002; Rev. 7/1/2003)

Rule 4.32**Ex Parte Orders When Special Notice****Requested**

Reserved for Future Use.

(Adopted, Eff. 1/1/90; Renumbered 7/1/2001; Deleted eff. 7/1/2003)

Rule 4.33**Communications with the Court**

Document presented to the Probate Court for filing must comply with applicable Probate Codes and Rules of Court, and notice of filing must be given as required. Other communications such as letters and notes directed to the court or staff are in violation of the Canons of the Court and may not be filed or reviewed by the Court or staff.

(Renumbered and New 7/1/2003)

Rule 4.34**Nunc Pro Tunc Orders Correcting Clerical Errors**

A. If, through inadvertence, the minute order or the signed decree fails to state the order actually made by the court, and such inadvertence is brought to the attention of the court by declaration, the court may make a nunc pro tunc order correcting the mistake, which will relate back to the date of the original order. The order must be captioned: "Nunc Pro Tunc Order Correcting...[Caption of original order]..."

B. The order must not take the form of an amended order and must be substantially in the following form: "Upon consideration of the affidavit or declaration of _____, to correct a clerical error, the [identify the order to be corrected, giving the title and date thereof] is corrected on the court's own motion, by striking the following [here set out the matter to be eliminated] and by inserting in lieu thereof the following: [here set out the corrected matter]"

C. The original order is to be marked by the clerk to indicate that a nunc pro tunc order has been signed, however, the original order is not to be physically changed by the clerk in any other manner, but is to be used in conjunction with the nunc pro tunc order correcting it.

D. To prevent further errors, a complete clause or sentence must be stricken, even if it is intended to correct only one word or a single figure. Reference must not be made to page and line number of a written order intended to be changed as the line number may vary on various copies of the same order.

E. The date of the order must be left blank for the Court to fill in and immediately following or below the blank date must appear the words "nunc pro tunc to [date of original order]." (Adopted 1/1/90, Renumbered 7/1/2001; Rev. 7/1/2002, Rev. 7/1/2003)

Rule 4.35**Tentative Rulings**

At the option of the Judicial Officer sitting in Probate, tentative law and motion rulings will be made available in accordance with local rule 2.19. Tentative rulings will be made available by telephone at 619-531-3690 and on the court's website at www.sandiego.courts.ca.gov/superior/online/telerule.html by 3:00 p.m. on the date the motion is set. (Effective 1/1/2004)

Rule 4.36**Bonds; Additional Bond**

In a matter where bond has previously been posted, there must be included in any current

account a separate paragraph setting forth the total bond posted, the appraised value of personal property and real property subject to disposition without court approval or confirmation, the estimated annual income from real and personal property and a statement of any additional bond thereby required. (Adopted, Eff. 1/1/90, Amended 1/1/91; Renumbered and revised 7/1/2001; Rev. 7/1/2002)

Rule 4.37**Deposited Funds (Blocked Accounts)**

A. Cash may be deposited in blocked accounts subject to withdrawal only on order of the court. Such deposits must be in this state in a bank, credit union, or insured savings and loan. Cash may not be deposited with any other institution to qualify for a blocked account.

B. Cash so deposited will be excluded in computing the amount of bond necessary.

C. Where the court makes the order blocking funds at any calendared hearing, both an order on the hearing and a separate "Order To Deposit Money Into Blocked Account" (MC-355) must be presented.

D. Within three weeks following the date of the minute order the "Receipt and Acknowledgment of Order for the Deposit of Money into Blocked Account" (MC-356) must be filed with the Probate Court. If the appropriate receipt is not returned, the personal representative and counsel of record are subject to an Order to Show Cause why bond should not be posted and sanctions imposed.

E. When the receipt of the depository cannot be returned within the three-week period for good cause, an ex parte applications may be presented by counsel showing the cause, along with an ex parte order extending the time to return the receipt. Good cause might be the non-closing of escrow, and a reasonable extension would be an additional three weeks.

(Adopted 1/1/90; Amended 7/1/96, Renumbered 7/1/2001, Rev. 7/1/2002, Rev. 7/1/2003)

CHAPTER 8 APPOINTMENT OF EXECUTORS AND ADMINISTRATORS

Rule 4.38**Preference Re: Letters of Special Administration**

In making the appointment of a special administrator, preference is given to the person entitled to letters testamentary or of administration, but if it appears that a bona fide contest exists, the court may consider the advisability of appointing a neutral person or corporation fiduciary as special administrator.

(Adopted, Eff. 1/1/90, Renumbered & Rev. 7/1/2001, Rev. 7/1/2002)

Rule 4.38A**Letters Issued in Decedent's Estates**

A. Letters issued in a decedent's estate will expire 18 months after the date the underlying petition is approved.

B. At the hearing where the court approves the petition for administration and for letters to issue, a review hearing will be set for no later than 18 months.

C. At the time of the review hearing, if the estate has been closed, the review hearing will be taken off calendar. If the estate has not been closed, the petitioner will be ordered to file a Status Report under Probate Code Section 12200 and report why the estate has not been closed. The court may make additional orders as, in the court's discretion, is appropriate.

(Added eff. 7/1/2002)

Rule 4.39**Allegations in Petitions Re: Beneficiaries**

In all petitions pertaining to the administrative duties of a fiduciary:

A. The nominated trustee of a trust created by a will must be listed as a beneficiary. (See also rule 4.23.)

B. If the interest of the beneficiary is contingent as of the date of the petition, or the happening of an event, such as survivorship for a specified period, then the contingent beneficiary must also be listed.

C. Each person provided for in the original will whose devise has been revoked in a subsequent codicil.

D. The street address and relationship of the proposed personal representative must appear in the petition.

E. When second generation heirs are listed, the deceased ancestor through which they take must be named, along with the ancestor's relationship to decedent.

(Adopted, Eff. 1/1/90; Amended 7/1/91; Renumbered & Rev. 7/1/2001, Rev. 7/1/2002; Rev. 7/1/2003)

Rule 4.40**Subsequent Petitions for Probate**

Reserve for Future Use

(Deleted eff. 7/1/2003)

Rule 4.41**Notice on Subsequent Petitions for Probate**

Reserve for Future Use.

(Deleted eff. 7/1/2003)

Rule 4.42**Notice to Foreign Consul**

A. If a citizen of a foreign country dies without leaving a will or leaves a will without naming an executor, or if it appears that property will pass to a citizen of a foreign country, notice must be given to a recognized diplomatic or consular official of the foreign country maintaining an office in the United States. (Probate Code, § 8113).

B. When notice is required to be given as set forth herein, the identity of the proper consul must be set forth in Attachment 8 to the petition for probate.

C. If a beneficiary whose address is in a foreign nation is an American citizen, that fact must be alleged to avoid having to set forth that nation's foreign consul.

D. Notices pursuant to this rule will be required only for an original petition for probate.

E. Information as to whether a country has recognized diplomatic or consular representation in the U.S. may be obtained from the U.S. Department of State.

(Adopted 1/1/90, Renumbered 7/1/2001, Rev. 7/1/2002)

Rule 4.43**Will Admission**

A. If the will of a person who was domiciled in this State at the time of death is detained in a court of any other state or country and cannot be produced for probate in this State, a certified photographic copy of the will may be admitted to probate in this state with the same force and effect as the original will. The same proof must be required as though the original will were produced. (Probate Code, § 8202).

B. If the will of a person who was domiciled in another State at the time of death is admitted to the court of the state of residency, the requirements of Probate Code section 12521 will apply.

C. If the will of a person is written and executed in a foreign language, the requirements of Probate Code section 8002(b) (2).

(Adopted 1/1/90, Renumbered 7/1/2001, Rev. 7/1/2002; Rev. 7/1/2003)

Rule 4.44**Multiple Testamentary Instruments - Proof**

Each proffered instrument must be proved by a separate affidavit or declaration pursuant to Probate Code section 8220. Nevertheless, an instrument, as defined by Probate Code section 88, which has been republished by a subsequent instrument need not be proven independently of the subsequent instrument. (Adopted 1/1/90, Renumbered 7/1/2001, Rev. 7/1/2002, Rev. 7/1/2003)

Rule 4.45**Will With Deletions or Interlineations**

Where the will offered for probate contains alterations by interlineation or deletion on its face, the petition for probate must contain allegations to explain the alterations and state petitioner's position in the matter. The petition must request that the interlineated portion be admitted or not admitted or that the deletions take effect or be disregarded or make such other request as petitioner finds to be according to the law. The petition must further contain statements of all relevant facts regarding the alteration, for example, whether the will was in the possession of the decedent. Such additional statements must be set forth in an attachment to the Judicial Council form petition.

(Adopted 1/1/90, Renumbered 7/1/2001, Rev. 7/1/2002)

Rule 4.46**Bonding of Personal Representatives**

A. When a bond is required, the minimum bond that will be set for a resident and non-resident personal representative upon initial appointment will be \$10,000.

B. Bonds required by the court at the hearing of the petition for appointment of the personal representative must be filed with the Clerk of the Superior Court before the clerk will issue the appropriate letters.

C. Any request for a waiver of bond must include a statement by the petitioner regarding knowledge of any creditors of the decedent and the amount of the claim.

(Eff. 1/1/1990, Renumbered & Rev. 7/1/2001, Rev. 7/1/2002)

Rule 4.47**Declinations and Consents to Serve**

A. It is insufficient merely to allege that the person or non-California bank or trust company named in the decedent's will as executor thereof is not qualified or declines to act. A written declination to act, signed by such person or entity, must be filed with the court.

B. If a petition for issuance of letters to one or more personal representatives is filed and any of the named personal representatives for whom letters are sought is not a petitioner, then a consent to act, signed by each such non-petitioning personal representative must be filed with the court.

(Adopted 1/1/90, Renumbered & Rev. 7/1/2001, Rev. 7/1/2002)

Rule 4.48**Continuance to Permit Filing of Contest**

If an interested party appears in person or by counsel when a petition for probate is called for

hearing and declares a desire to file a written contest, the court will continue the hearing with the understanding that if a contest is not actually on file at the new hearing date, the hearing will proceed.

(Adopted 1/1/90; Amended 7/1/91, Renumbered & Rev. 7/1/2001)

Rule 4.49**Multiple Representatives**

The clerk will not allow less than all appointed representatives to qualify and will only issue letters jointly to all appointed representatives, unless the order of appointment specifically provides for separate qualification.

(Adopted 1/1/90, Renumbered 7/1/2001)

Rule 4.50**Statement of Address of Nonresident Personal Representative**

A nonresident personal representative is to file with the court a signed and acknowledged statement setting forth the personal representative's permanent address. If this has not been done and anyone questions the handling of the estate, the court, on its own motion, may undertake proceedings for removal of the personal representative pursuant to the Probate Code.

(Adopted 1/1/90, Renumbered 7/1/2001, Rev. 7/1/2002)

CHAPTER 9 SUMMARY PROCEEDINGS

Rule 4.51**Petition to Set Aside Small Estate**

A petition to set aside a small estate (under Probate Code section 6602) must be filed as a separate petition and must not be worded in the alternative with a petition for probate. If a petition to set aside a small estate is filed concurrently with a petition for probate, the petitions may be set for hearing at the same time.

(Adopted 1/1/1990, Renumbered 7/1/2001, Rev. 7/1/2002)

Rule 4.52**Spousal Property Petition**

A. If the basis for determining that property should pass or be confirmed to the surviving spouse is that the property is community property or quasi-community property, the following information should be included in the spousal property petition:

(1) Date and place of marriage;

(2) Ownership of any real and personal property on date of marriage and a description and approximation of values;

(3) Decedent's net worth at time of marriage;

(4) Decedent's occupation at time of marriage;

(5) A description of any property acquired after date of marriage by gift, devise, descent, proceeds of life insurance or joint tenancy survivorship, and dates of receipt and approximation of values;

(6) The identification of any property described in (2) or (5) above which is still a part of this estate;

(7) A copy (preferably a photocopy, showing signatures) of any document establishing the character of the property; and

(8) Any additional facts upon which the claim that property is community or quasi-community property is based.

(Adopted 1/1/90, Renumbered 7/1/2001, Rev. 7/1/2002)

Rule 4.53

Proceedings to Establish Fact of Death

A. A petition to establish the fact of death (under Probate Code section 200), where title to or any interest in property is affected by the death of a person (as in the case of death of a joint tenant or life tenant), must be filed as a separate petition from a petition for probate.

B. There is no provision in the Probate Code for the determination by the court of attorneys' fees in proceedings to establish the fact of death. No request for fees for services of this character may be included in any probate proceeding relating to the person whose fact of death is determined. Where, however, proceedings are necessary to establish the fact of death of a person who predeceased the decedent, a fee for extraordinary attorney's services may be proper in connection with administration of the latter decedent's estate.

C. A petition to establish the fact of death must be filed in a proceeding in the name of the deceased person whose interest is to be terminated, and the petition will not be acted upon if it is filed in any other proceeding.

D. A petition to establish the fact of death will be set for hearing at the time of filing unless otherwise requested by the person filing the petition.

E. In proceedings to establish the fact of death, the judgment may recite that the interest of the deceased person in the property has terminated. Recitals as to vesting of title must not be included.

F. A petition to establish the fact of death of an individual under Health & Safety Code section 10340 is a separate proceeding from the petition identified in (A), above. Upon filing a petition under Health & Safety Code section 10340, a hearing will be set not less than five nor more than 10 days after the filing of a petition.

G. The court may make an order on the petition filed under (F) determining the death did in fact occur at the time and place shown by the proofs adduced at the hearing. The order must be made in the form prescribed and furnished by the State Registrar, and will become effective upon a filing of a certified copy with the State Registrar

H. Petitions to establish the fact of birth or marriage under Health & Safety Code section 10340 are set in the same manner as (F).

(Adopted 1/1/90, Renumbered 7/1/2001, Rev. 7/1/2002; Rev. 7/1/2003)

CHAPTER 10 INDEPENDENT ADMINISTRATION

Rule 4.54

Independent Administration

When a personal representative has been granted authority to administer the estate under the Independent Administration of Estates Act (beginning at Probate Code section 10400), the following policies apply:

A. The original of the notice of proposed action with proof of mailing or personal delivery of the notice must be filed with the court.

(Adopted 1/1/1990, Renumbered 7/1/2001, Rev. 7/1/2002)

CHAPTER 11 MISCELLANEOUS PETITIONS

Rule 4.55

Petition for Instructions (Probate Code Section 9611)

A. The use of petitions for instructions is limited to those matters for which no other procedure is provided by statute.

B. Petitions for Instructions may not be used to determine the manner in which an estate should be distributed. A direction of the court regarding distribution of an estate will only be furnished pursuant to a Petition for Distribution or a Petition to Determine Entitlement.

C. The petitioner must set forth in the petition the specific instructions which petitioner believes the court should give.

(Adopted 1/1/90, Renumbered & Rev. 7/1/2001, Rev. 7/1/2002)

Rule 4.56

Petition to Determine Title to Real or Personal Property (Probate Code Sections 9860-9868) 850

Petitions filed pursuant to Probate Code section 850 shall be set for hearing at least 40 days from the date of filing. If difficulties in effecting personal

service are anticipated, a later hearing date may be obtained from the clerk so as to avoid continuances. (Adopted 1/1/90, Renumbered 7/1/2001, Rev. 7/1/2002, Rev. 7/1/2003)

Rule 4.57**Petition to Determine Persons Entitled to Distribution (Probate Code Sections 11700-11705)**

A. Petitions under Probate Code section 11700 may be filed to resolve issues relating to the determination of persons entitled to distribution of the decedent's estate. Such issues include, but are not limited to, the identification of heirs or beneficiaries, the interpretation of the will, and the characterization of assets as estate assets. (The term "person" is defined in Probate Code section 56.)

B. A petition under Probate Code section 11700 must set forth the specific determination which the petitioner believes the court should make and must provide for a complete disposition of the property of the estate.

C. When a determination of persons entitled to distribution is requested in a petition for distribution, notice must be given in the same manner as required when a separate petition under Probate Code section 11700 is filed.

D. When a determination of persons entitled to distribution is requested and it appears that there may be an escheat, notice of hearing and a copy of the petition must be sent to the Attorney General. If any of the heirs are unknown in the petition for probate, then there will be a presumption of possible escheat and notice to the Attorney General is required.

(Adopted 1/1/90, Renumbered & Rev. 7/1/2001, Rev. 7/1/2002; Rev. 7/1/2003)

Rule 4.58**Petition for Family Allowance (Probate Code Sections 6540-6545)**

A. Ex parte petitions for family allowance may be made during the six-month period following the qualification of personal representative if an inventory has not been filed. Consent to the allowance or waiver of notice of the personal representative must accompany the ex parte petition when the petitioner is not the personal representative. Ex parte orders for family allowance may be made for a period commencing with the date of death and continuing for a period not to exceed 12 months.

B. If an application for family allowance is made more than six months after the qualification of the personal representative, or after the inventory is filed, or is a petition for a second or additional allowance, a petition may not be filed ex parte and

the petition must be set for hearing and required notice must be given.

C. The petition for family allowance must set forth, (1) the nature of estate assets and estimated value of the estate, (2) an itemized estimate of the recipient's monthly expenses, and (3) the estimated value of the recipient's other property and estimated income. Where the itemized expenses show payments of loans secured by real or personal property, the vesting of title to the property must also be set forth in the petition.

D. All orders for family allowance will be limited to a definite period and must provide for the allowance to be "for _____ months from the date of the order or until further order of the court, whichever occurs first." (Adopted 1/1/90; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002)

Rule 4.59**Petition for Authority to Operate a Business, (Probate Code Section 9760)**

A. The court may direct that at least 15 days' notice be given to the three largest creditors of the business and to the beneficiaries of the estate when the personal representative petitions for authority to continue the operation of the decedent's business.

B. The court may prescribe any reasonable notice. A separate order prescribing notice must be obtained ex parte before the petition is filed.

(Adopted 1/1/90, Amended 7/1/96; Renumbered 7/1/2001, Rev. 7/1/2002)

Rule 4.60**Petition for Authority to Borrow (Probate Code Sections 9800-9807)**

A. Petitions for authority to borrow money must set forth the amount of the bond in force and the amount of the loan proceeds. If no additional bond is required, or if bond is waived, that fact must be alleged.

B. If a loan is to be secured by the property of the estate, an inventory for that property must be on file prior to the hearing.

(Adopted 1/1/90, Renumbered 7/1/2001, Rev. 7/1/2002)

Rule 4.60A**Petition for Authority to Retain an Attorney**

A. A petition for authority to retain an attorney to pursue litigation must contain an allegation regarding counsel to be retained, the hourly rate or contingent fee agreement, the service to be provided, and a prospective amount that will be required for litigation.

B. If it appears that additional funds will be required over the amount allowed by the court on the initial petition, a subsequent petition must be set for hearing requesting an additional amount

including the necessity for further funds, the amount spent to date, and for what services.
(Adopted eff. 7/1/2002)

CHAPTER 12 CREDITOR'S CLAIMS

Rule 4.61

Notice to Creditors

A. General notice is initially given to creditors by publishing a Notice of Petition to Administer Estate under Probate Code section 8120 ("Notice of Administration").

B. Notice of Administration must also be given to all known or reasonably ascertainable creditors pursuant to Tulsa Professional Collection Services, Inc. v. Pope (1988) 485 U.S. 478 and Probate Code section 9050. This notice must be filed with the court

C. In an interim or final accounting, the personal representative must describe the compliance with Probate Code section 9050 and Tulsa. (See rule 4.89.)
(Eff. 1/1/90, Rev. 1/1/2000; Renumbered 7/1/2001)

Rule 4.62

Filing Creditors' Claims

Counsel are advised to review the court file for creditors' claims prior to filing the final accounting. See Probate Code Section 9250.

(Adopted 1/1/90, Renumbered & Rev. 7/1/2001, Rev. 7/1/2002)

Rule 4.63

Creditors' Claims of Personal Representatives or Counsel

A. The creditor's claim of a personal representative or counsel for the personal representative must be timely filed with the court. A separate notation must be attached to the face of the claim indicating that the claim requires specific court action.

B. A blank allowance or rejection form must be attached for the court's action, with copies to be returned to counsel.

(Adopted 1/1/90; Renumbered & Rev. 7/1/2001, Rev. 7/1/2002)

Rule 4.64

Independent Administration

This section intentionally left blank
(Adopted 1/1/90, Renumbered and revised 7/1/2001, Repealed 7/1/2002)

Rule 4.65

Payment of Claims and Debts

A. Other than those creditors' claims ordered paid by the court, the personal representative may

defer payment of claims until settlement of an account.

B. The personal representative may timely pay any debts that are just and reasonable subject to later approval by the court under Probate Code section 11005, which approval must be supported by appropriate evidence required by that section.

Payment pursuant to Probate Code section 11005 assumes that the debt is undisputed and the estate is solvent. Prudence may dictate caution before paying such claims. (Adopted 1/1/90, Amended 7/1/96, Renumbered 7/1/2001)

Rule 4.66

Special Creditors' Claims

A. Funeral expenses must be reasonable and interest is allowed on such claims commencing 60 days after the date of death.

B. Public entities' creditor's claims are governed by Probate Code section 9200, et seq., and may be barred only after actual notice is sent the entity and the applicable claim period has expired.

C. Notice to the Director of Health Services for Medi-Cal claims must comply with Probate Code section 9202 and Welfare and Institutions Code, Section 14009.5. The proper address for service is Department of Health Services, P.O. Box 2471, Sacramento, CA 95812-2471.

(Adopted 1/1/90; Amended 7/1/96, Renumbered 7/1/2001)

CHAPTER 13 SALES

Rule 4.67

Publication of Notice of Sale of Real Property

A. Unless one of the exceptions mentioned in Probate Code section 10301-10303 applies, a publication of notice of sale of real property is required. A discretionary power of sale given by a will to a named executor does not extend to an administrator with will annexed unless the will so provides.

B. The notice of sale of real property must set forth the street address or other common designation of the property, if any, or if there is none, the legal description.

C. If a petition for confirmation of sale is filed alleging the sale took place prior to the date stated in the published notice, the sale cannot be confirmed.

D. If a fiduciary publishes a notice of sale of real property, the property must be sold pursuant to such publication.

E. If notice of sale is published, any sale must be in accordance with its terms. There cannot be a variance in the terms of sale as between the notice

and the petition. Also, if the notice solicits cash offers only, the court cannot confirm a sale on terms other than cash.

F. If a petition for confirmation of sale of real property is filed prior to the date of sale specified in the notice, the court cannot announce the sale on the date set for hearing, but must deny confirmation without prejudice to a new sale and filing of a new return of sale.

G. In conservatorships, notice must be given to the conservatee as well as to any person requesting special notice. In guardianships notice must be given to any ward age 12 or older.

(Adopted, Eff. 1/1/90; Amended, Eff. 7/1/95; Renumbered & Rev. 7/1/2001)

Rule 4.68**Vesting of Title to Property**

A. The court will not confirm a sale to a "nominee" or "assignee", only to the actual buyer.

B. In a conservatorship of guardianship, a statement must be made whether or not the purchase of the real property has been made by a person with a family or affiliate relationship to the conservator or guardian as defined by Probate Code Section 2359 and 2403.

C. In a conservatorship or guardianship, a statement must be made whether or not there is a family or affiliate relationship between the conservator or guardian and any agent hired by them as defined by Probate Code Section 2359 and 2403. (Adopted 1/1/90, Renumbered & Rev. 7/1/2001, Rev. 7/1/2002)

Rule 4.69**Bond on Sale of Real Property**

A. Petitions for confirmation of sale of real property must set forth the amount of bond, if any, in force at the time of the sale, the amount of property in the estate which must be covered by bond subsequent to the sale, including proceeds of sale (cash and any note taken back by estate), and the probable annual income from remaining property. If no additional bond is required, or if bond is waived, such facts must be alleged.

B. Where an additional bond is required, the personal representative must file an additional bond, rather than a substitute bond, and it must be filed with the order confirming the sale.

(Adopted 1/1/90, Renumbered 7/1/2001, Rev. 7/1/2002)

Rule 4.70**Exclusive Listings for the Sale of Real Property**

A specific commission percentage will not be approved by the court as part of the exclusive listing agreement. All commissions are determined at the confirmation hearing.

(Adopted 1/1/90, Renumbered 7/1/2001, Rev. 7/1/2002)

Rule 4.71**Commissions on Sale of Real Property**

A. In all cases, a reasonable broker's commission will be determined by the court at the time of confirmation and must be paid from proceeds of the sale confirmed by the court. The court may consider current community practices and standards in making its determination. The court may allow a five percent commission on improved property or 10 percent on unimproved property absent good cause shown for a larger commission.

B. The court must be advised whether the broker is, or has a financial interest in, the purchaser. (See Prob. Code § 10160.5.)

(Adopted 1/1/90, Amended 1/1/91; Amended 7/1/95, Renumbered & Rev. 7/1/2001, Rev. 7/1/2002)

Rule 4.72**Sale of Real Property When Buyer Assumes Encumbrance: Necessity for Minimum Deposit**

A. A sale of real property may not be confirmed where the buyer assumes or takes subject to an existing encumbrance if the estate is subject to a contingent liability. The petition must set forth the facts pertinent to such assumption agreement.

B. The court requires a 10 percent deposit be made prior to confirmation on any sale of real property.

(Adopted 1/1/90, Amended 1/1/91, Renumbered & Rev. 7/1/2001, Rev. 7/1/2002)

Rule 4.73**Sale of Specifically Devised Property**

A. On a sale of specifically devised real or personal property, 15 days notice of time and place of hearing of the return of sale must be given to the devisee.

B. The sale may not be approved without the specific beneficiary's consent unless the court finds justification for approval without the consent.

(Adopted, Eff. 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002)

Rule 4.74**Personal Property Must Be Appraised Before Sale**

Sales of personal property may not be approved as sales of depreciating property, or confirmed, unless the property has been appraised. When necessary, a partial inventory and appraisal or a letter of appraisal obtained from the probate referee may be filed for this purpose.

(Adopted, Eff. 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002)

Rule 4.75**Sales of Mobile Homes**

The court may approve sales of mobile homes as depreciating property. The petition for approval must set forth the efforts made to expose the property to the market.

(Adopted 1/1/90, Renumbered 7/1/2001, Rev. 7/1/2002)

Rule 4.76**Sales of Securities**

A. Commonly traded securities need not be appraised before the sale may be authorized.

B. In petitions for sales of listed securities, the specific exchange on which such securities are traded must be set forth.

C. In petitions for sales of unlisted securities, the recent bid and asked prices must be set forth.

D. Petitions for sale of mutual funds redeemable by the issuer at net asset value need only allege that the shares will be redeemed for the net asset value per share on the date of redemption.

E. If securities are "closely held," the petition must furnish the basis (by appraisal or otherwise in the discretion of the court) for fixing the minimum sales price.

F. The order authorizing the sale of any bond or unlisted stock (other than a mutual fund) must provide that the sale must be at not less than a specified amount per unit.

(Adopted 1/1/90, Renumbered 7/1/2001, Rev. 7/1/2002)

Rule 4.77**This space left intentionally blank.**

(Adopted 1/1/90, Renumbered & Rev. 7/1/2001, Repealed 7/1/2002)

Rule 4.78**Memorandum of Sale for Use by the Court****Reserve for Future Use**

(Eff. 1/1/90, Rev. 1/1/2000, Renumbered & Rev. 7/1/2001, Rev. 7/1/2002, Deleted eff. 7/1/2003)

Rule 4.79**Overbids**

If the overbid is on terms different from the terms of the returned sale, the offer may be considered only if the personal representative, prior to confirmation of the sale, informs the court in person or by counsel that the offer is acceptable.

(Adopted 1/1/90, Renumbered 7/1/2001, Rev. 7/1/2002)

Rule 4.80**Increased Bid Forms**

When there is a successful overbid in open court on a sale of real property, an "Increased Bid in Open Court" SUPCT. form PR-65(10-91) must be completed, signed, and filed with the court before confirmation is effective.

(Form Deleted eff. 7/1/95, Renumbered & Rev. 7/1/2001)

Rule 4.81**Allowance of Commissions Upon Overbid**

When sale is confirmed upon an overbid and a real estate commission is involved, it is the duty of counsel for the estate to compute the commission pursuant to Probate Code section 10164 or 10165 and any allocation thereof between brokers per any agreement they may have, and to report the same to the court for its approval and inclusion in the court's minute order.

(Adopted 1/1/90, Renumbered & Rev. 7/1/2001; Rev. 7/1/2002)

CHAPTER 14 INVENTORY AND APPRAISAL

Rule 4.82

Preparation of Inventory and Appraisal

A. Attachment No. 1 to the Inventory must include assets appraised by the personal representative. Those items which may be appraised by the personal representative are set forth in Probate Code section 8901.

B. Attachment No. 2 must list all assets to be appraised by the probate referee.

C. The Inventory must contain a statement of the character of the property on each attachment (i.e., separate, community, quasi-community). If the character of property is community and/or quasi-community, the statement must indicate whether the estate includes the entire or a one-half interest in the asset.

D. The Inventory must list all assets of the estate as they existed as of the date at which the assets are to be appraised (i.e., date of death or date of appointment of guardian or conservator).

E. With the exception of specific sums of cash, all specifically bequeathed personal property owned by the decedent on the date of death must be itemized and separately appraised on the Inventory.

F. An Inventory of real property must include the following information:

- (1) Complete legal description;
- (2) Common address;
- (3) Assessor's Parcel Number;
- (4) Description of type of property (i.e., single family residential, multi-family residential, commercial, industrial, agricultural timber, mining, mineral interests, unimproved land).

G. The Inventory must not include any asset which is not an asset of the estate, such as:

- (1) Insurance proceeds payable to named beneficiaries.
- (2) Individual retirement accounts payable to named beneficiaries.
- (3) Trust assets which pass by trust terms, including Totten Trusts.
- (4) Assets held in joint tenancy.
- (5) Out of state real property.

(Adopted 1/1/90, Renumbered & Rev. 7/1/2001, Rev. 7/1/2002)

Rule 4.83

Statement Regarding Bond

Reserve for Future Use

(Adopted, Eff. 1/1/90; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Deleted eff. 7/1/2003)

Rule 4.84

Correcting Inventory and Appraisal

A. If, before filing the Inventory with the court, a mistake is found, the personal representative may make changes to Attachment No. 1. However, any changes to Attachment No. 2 must be made by the probate referee.

B. If a mistake is found after filing the Inventory with the court a Corrected or Amended Inventory must be filed to correct the error.

C. If a change to Attachment No. 2 is necessary after it has been filed with the court, the correcting Inventory must be signed by the probate referee.

D. If a change to Attachment No. 1 is necessary, a Correcting Inventory may be signed only by the personal representative.

E. Only items being corrected are described on a Corrected Inventory and Appraisal.

For example:

Item No.	Description	Appraised Value
4.	Item 4 was previously described as: 400 shares XYZ common stock	
	Item 4 is correctly described as: 300 shares XYZ common stock	
	Previously appraised	value:
	\$4,000.00	
	Correct appraised	value:
	\$3,000.00	
	Change in appraised	value:
	(\$1,000.00)	

(Adopted 1/1/90, Amended 7/1/96, Renumbered & Rev. 7/1/2001)

Rule 4.85

Petition for Waiver of Appraisal by Referee

When no referee has been designated for the case, 15 days notice of the filing of a petition for waiver of appraisal by referee must be given to the referee designated by the San Diego Probate Referees to represent them, in the same manner as would be given to a referee designated for the case. (Adopted 7/1/96, Renumbered & Rev. 7/1/2001)

CHAPTER 15 ACCOUNTS AND REPORTS

Rule 4.86

Required Form of Accounts

A. All accounts filed in probate proceedings, including guardianship, conservatorship, trust and decedents' estates, must set forth the beginning and ending dates of the account period and conform to Probate Code sections 1061 through 1063.

B. Accounting values of assets must not be changed to reflect fair market value, but fair market value may be set forth separately in the report or account.

C. Dispositive provisions of the Will, if any, must be set forth in the Final Accounting.
(Eff. 1/1/90, Rev. 1/1/2000, Renumbered & Rev. 7/1/2001, Rev. 7/1/2002)

Rule 4.87

Waiver of Accounting in Decedents' Estates

Reserve for Future Use

(Adopted 1/1/90, Renumbered 7/1/2001, Deleted eff. 7/1/2003)

Rule 4.88

Bank Letters

A. All interim accounts by individual fiduciaries must be supported by bank statements or financial statements verifying the balances of accounts at institutions or financial institutions as of the closing date of the accounting. The statements must be the originals, must show the vesting of the account, date of balance and the amount of balance.

B. The appropriate balance must be clearly highlighted or otherwise marked.

C. Balances shown in the accounting, if different, must be reconciled to the letters or statements.

D. Bank or financial statements containing personal information that would not otherwise be kept in a public file (i.e. social security number) must be filed under a separate pleading marked "Confidential Bank and/or Financial Statements"

E. For purposes of this section, "institutions" is defined per Probate Code section 2890(c).

F. For purposes of this section, "financial institutions" is defined per Probate Code section 2892(b).

(Adopted 1/1/90, Renumbered & Rev. 7/1/2001, Rev. 7/1/2002, Rev. 7/1/2003)

Rule 4.89

Allegations Re: Claims

The report accompanying any accounting or waiver of accounting must include the following information:

A. Whether any Notice of Administration was given to creditors within the last 30 days of the four-month statutory creditors' claim period and a complete listing of the creditors to whom such notice was sent, including the date mailed, to allow the court to determine the expiration of the creditors' claim period. This allegation is also necessary in petitions for preliminary distribution. (See Prob. Code, § 9051.)

B. If all Notices of Administration were given prior to the last 30 days of the four-month statutory claims period, an abbreviated statement noting that the requirements of Probate Code section 9050 were met is sufficient.

(Adopted 1/1/90, Renumbered 7/1/2001, Rev. 7/1/2002)

Rule 4.90

Reporting Payment of Debts

Although a verified claim has not been filed, the court may approve payment of a debt. Such court approval is discretionary and may be granted pursuant to Probate Code section 11005 upon the basis of the following allegations in the verified petition and report:

A. Identification of the creditor, the amount and the date paid;

B. The debt was justly due from the decedent's estate;

C. The debt was timely paid in good faith;

D. The amount paid was the true amount owed by the decedent and was reasonable; and

E. The estate is solvent.

(Adopted, Eff. 1/1/90; Renumbered 7/1/2001)

Rule 4.91

Fees Must be Stated Even Though Account Waived

Reserve for Future Use

(Adopted, Eff. 1/1/90; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Deleted eff. 7/1/2003)

Rule 4.92

Property to be Distributed Must Be Listed

A. The petition for distribution must list and describe in detail all property to be distributed, including cash on hand.

B. The description of promissory notes must indicate whether they are secured or unsecured; if secured, the security interest must be described.

C. Real property descriptions must include a complete legal description and street address and Assessor's Parcel Number.

D. The description must be set forth either in the body of the petition or in the prayer, or by a schedule in the accounting and incorporated in the petition by reference.

E. Description by reference to the inventory is not acceptable.

F. The value of each individual asset on hand and the total value of the assets must be set forth. (Adopted 1/1/90, Renumbered & Rev. 7/1/2001, Rev. 7/1/2002)

Rule 4.93**Allegation Re: Character of Property**

A. A petition for distribution must contain an allegation regarding the character of the property, whether separate, quasi-community or community.

B. An allegation regarding community or quasi-community property of the decedent must state whether the interest is the decedent's one-half or the entire community or quasi-community property of both spouses.

C. Unless the surviving spouse elects to include his or her interest in the probate estate pursuant to Probate Code section 13502, the court has no jurisdiction to order distribution of such interest or to order statutory fees based upon the value of such interest.

D. The court will authorize filing of a late election only upon showing of good cause. (Adopted 1/1/90, Amended 7/1/91, Renumbered 7/1/2001, Rev. 7/1/2002)

Rule 4.94**Compliance with Notice -- Medi-Cal**

Before the court will authorize distribution, there must be a showing of compliance with notice requirements to the Director of Health Services pursuant to Probate Code section 9202 or a showing that the notice thereunder is not required because neither decedent nor predeceased spouse received Medi-Cal, or that no claim can be made by the Department of Health Services because decedent died before June 28, 1981, was under age 65, or was survived by a spouse, minor child, or disabled child. (Adopted, Eff. 1/1/90; Revised, Eff. 7/1/95; Renumbered 7/1/2001)

Rule 4.95**Allegations on Waiver of Account**

Reserve for Future Use

(Deleted eff. 7/1/2003)

Rule 4.96**Vouchers**

Vouchers supporting accounts are not to be filed with the clerk unless the court specifically orders them filed. (Adopted 1/1/90, Renumbered 7/1/2001)

Rule 4.97**Damages for Wrongful Death and for Physical Injury of Decedent**

A. Damages for wrongful death, as distinguished from physical injury and property damage, are held by the personal representative on behalf of the statutory beneficiaries of the decedent's estate and are not part of the estate.

B. The disposition of such damages for wrongful death, and the amount of attorneys' fees and costs, may be determined by the court on a petition for authority to compromise. Notice of said petition must be mailed by the personal representative. This procedure is applicable to any action by the personal representative under federal as well as state law.

C. Damages and costs arising out of the physical injury to the decedent or property damage, as distinguished from wrongful death, must be held by the personal representative as the property of the estate and must be inventoried.

(Adopted 1/1/90, Renumbered & Rev. 7/1/2001, Rev. 7/1/2002)

Rule 4.98**Assignment of Interest in Estate**

When distribution is requested pursuant to an assignment by a distributee, the court will require that the assignment be filed in the proceeding and may require that the consideration paid for the assignment be set forth. The court will require additional information to assure that the assignor fully comprehends the effect of the assignment and that it was voluntarily made and was not grossly unreasonable.

(Adopted 1/1/90, Renumbered & Rev. 7/1/2001, Rev. 7/1/2002)

Rule 4.99**Notice to Prior Representative or Counsel**

If there has been a change of personal representative or a substitution of counsel, notice of hearing must be given to such prior representative or counsel of any petition in which fees or commissions are requested by the present personal representative or counsel unless:

A. A waiver of notice executed by the prior personal representative or counsel is on file; or

B. An agreement on the allocation of fees and/or commissions is on file or included in the petition; or

C. The file and the petition demonstrate that the fees and/or commissions of the prior personal representative or counsel have been provided for and allowed by the court.

(Adopted 1/1/90, Renumbered & Rev. 7/1/2001)

Rule 4.100**Petition for Authority to Continue Administration**

Requests for authority to continue the administration of an estate must be made by a status report. The court will limit the extension to a period not to exceed 12 months from date of the order. The court may require an accounting before approving a subsequent extension request. Refer to section 12201 of the Probate Code for notice requirements. (Adopted 1/1/90, Renumbered & Rev. 7/1/2001, Rev. 7/1/2002)

**CHAPTER 16
TAXES****Rule 4.101****Determination of Taxes**

Reserve for Future Use

(Adopted, Eff. 1/1/90; Renumbered & Rev. 7/1/2001; Deleted eff. 7/1/2003)

**CHAPTER 17
FEES AND COMMISSIONS****Rule 4.102****Assignments in Lieu of Attorneys' Fees; Approval of Right to Compensation**

Reserve for Future Use

(Adopted, Eff. 7/1/96; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Deleted eff. 7/1/2003)

Rule 4.103**Fees and Commissions in Decedents' Estates**

Reserve for Future Use.

(Adopted, Eff. 1/1/90; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Deleted eff. 7/1/2003)

Rule 4.104**Allowance on Account of Fees and Commissions**

Allowance on account of statutory fees or commissions may be granted by the court only in proportion to the work actually completed, and in no event may more than 75 percent of the statutory fees or commissions be allowed prior to the approval of the final account and the order of distribution. No allowance of said fees will be granted before an accounting is filed and approved. (Adopted, Eff. 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002)

Rule 4.105**Determination of Statutory Fees and Commissions**

Reserve for Future Use.

(Adopted, Eff. 1/1/90; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Deleted eff. 7/1/2003)

Rule 4.106**Determination of Fees for Extraordinary Services**

Reserve for Future Use.

(Adopted, Eff. 1/1/90; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Deleted eff. 7/1/2003)

Rule 4.107**Office and Travel Expense**

A. Ordinary office expenses and travel incurred by a fiduciary or counsel are deemed to be compensated by the statutory fee, and the court will not allow further reimbursement except:

1. An exception may be made for the reasonable expenses of fiduciaries for travel outside of San Diego County on estate business.

2. The court may allow travel expenses within San Diego County or unusual office expenses such as photocopying, express mail, postage, or long distance phone expense, if the court considers such expenses necessary and reasonable in view of the amount of the statutory fees and work required in administration of the estate.

B. Travel and office expenses appearing in any account must be explained in the report.

(Adopted, Eff. 1/1/90; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002)

**CHAPTER 18
DISTRIBUTION****Rule 4.108****Distribution to Minor**

When a beneficiary is a minor or a disabled adult, the court requires the following documents to be filed in conjunction with the accounting and petition for final distribution:

A. A certified copy of the Letters of Guardianship or Conservatorship when distribution is to be made to the guardian of the minor or a disabled adult.

B. The written assurance of a parent that the minor's estate, including the bequest, does not exceed \$5,000 when distribution is made pursuant to Probate Code Section 3401.

C. The consent of the custodian to act if distribution is to be made to a custodian under the California Uniform Transfers to Minors Act (Probate Code § 3900 et seq.).

(Adopted, Eff. 1/1/90; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002)

Rule 4.109**Distribution Under Probate Code Section 13101 Affidavit**

If distribution is to be made to a person collecting assets under Probate Code section 13100,

the required affidavit or declaration pursuant to Probate Code section 13101 must be filed before distribution will be ordered.

(Adopted, Eff. 1/1/90; Renumbered 7/1/2001)

Rule 4.110**Blocked Accounts**

In any case in which funds are to be placed in a blocked account, Rule 4.37 of these rules must be followed.

(Adopted, Eff. 1/1/90; Renumbered 7/1/2001; Rev. eff. 7/1/2003)

Rule 4.111**Distribution to Deceased Beneficiary**

When an heir or beneficiary dies during administration of an estate, the decree must provide for distribution to the personal representative of the estate of the heir or beneficiary, pursuant to Probate Code sections 11801 and 11802, or, if applicable, to the person(s) entitled to the property in a summary proceeding pursuant to a declaration or affidavit under Probate Code section 13101.

(Adopted, Eff. 1/1/90; Amended, Eff. 7/1/91; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002)

Rule 4.112

This section intentionally left blank

(Adopted 1/1/90, Renumbered 7/1/2001, Repealed 7/1/2002)

Rule 4.113**Preliminary Distribution Bond**

A. If a preliminary distribution is made before the time for filing creditors claims has expired, a bond must be furnished by the distributees in an amount set at the discretion of the court.

B. When a bond is not required by the court, the order must include a finding that the time for filing or presenting claims against the estate has expired and that all uncontested claims have been paid or are sufficiently secured.

C. An allegation and showing will be required concerning notice to any additional known or reasonably ascertainable creditors pursuant to *Tulsa Professional Collection Services, Inc. v. Pope* (1988) 485 U.S. 478. Unless such notices have been given, the time to file claims will not be considered to have expired and the court will impose a bond upon each distributee of the preliminary distribution.

(Adopted, Eff. 1/1/90; Amended, Eff. 7/1/91; Renumbered & Rev. 7/1/2001)

Rule 4.114**Interest on General Pecuniary Legacies**

The court will strictly enforce the Probate Code provisions for the payment of interest on general

pecuniary legacies not paid within one year from the date of decedent's death unless payment of interest is waived in the will. (See Probate Code, §§ 12001 and 12003.)

(Adopted, Eff. 1/1/90; Renumbered 7/1/2001)

Rule 4.115**Receipts on Partial Distribution**

Receipts for property received in partial distribution must be filed with the court before the final account.

(Adopted, Eff. 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002)

Rule 4.116**Receipts on Final Distribution**

Receipts for property received on final distribution must be signed by the distributee personally. The court may not accept receipts signed by an attorney-in-fact.

(Adopted, Eff. 1/1/90; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002)

Rule 4.117**Order of Final Discharge**

The court will not sign the order of final discharge until all receipts on distribution are filed and all remaining property withheld from distribution is properly disbursed and/or distributed by the personal representative as alleged in a separately filed declaration.

(Adopted, Eff. 1/1/90; Renumbered & Rev. 7/1/2001)

Rule 4.118**Supplemental Accountings with Final Discharge**

Supplemental accountings must be submitted for review when \$500 - \$10,000 is withheld at the time of the final accountings. For withheld amounts over \$10,000, a hearing date will be set and notice is required.

(Eff. 1/1/90, Renumbered and Revised 7/1/2001)

CHAPTER 19 CONSERVATORSHIPS

Rule 4.119**Temporary Conservatorships**

A. A petition for appointment of a temporary conservator of the person or estate or both must be made in a separate pleading. It may not be included in, and may not be filed prior to the filing of, the petition for appointment of a permanent conservator.

B. The court will not consider the appointment of a temporary conservator ex parte and will set the

petition for hearing with a five days notice requirement unless proper showing is made that:

(1) An immediate necessity exists.
 (2) The proposed conservatee is present; the proposed conservatee is hospitalized and cannot attend; evidence is presented that the proposed conservatee has notice of the ex parte hearing and its purpose and cannot appear; the proposed conservatee is incapable of understanding notice; or the proposed conservatee has consented and waived notice. Allegations of medical inability or lack of capacity to attend must be supported by a physician's declaration.

(3) There are no relatives in equal or closer relationship than the petitioner, or such relatives nominated or consented to petitioner's appointment.

(4) No objections to the petition are known to petitioner.

C. If it appears that a temporary conservator is necessary, but that notice should be given to the proposed conservatee or any other person, the petition will be set for the first conservatorship calendar not less than five days away and should be walked through Probate Examining by counsel to assure proper setting.

D. A temporary conservator is appointed for only 30 days, but such appointment will be automatically extended by the court to the date of the hearing on the permanent conservatorship absent a showing of good cause. If a continuance of the hearing on the general conservatorship petition is necessary, counsel may appear at the hearing and request the extension of the temporary conservatorship. Alternatively a request to extend may be made ex parte, if the request is presented before the expiration of the appointment and there are no objections.

E. Good cause must be shown for special powers to be granted without a hearing. When special powers are sought, they must be specifically requested and supported by factual allegations. (Eff. 1/1/90; Amended 7/1/95, Rev. 1/1/2000; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002)

Rule 4.120

Petition for Appointment of Conservator; Allegations and Notice Requirements; Supplemental Information

A. All petitions for appointment of conservator shall state whether or not there is presently a conservator appointed under the Lanterman-Petris Short Act ("LPS") and, if so, the number of the Mental Health action, the name of the conservator, and that court's findings regarding the proposed conservatee's ability to complete the affidavit of voter registration.

B. If an LPS conservatorship exists, notice must be given to:

(1) The LPS conservator.
 (2) Counsel representing the LPS conservatee.

(3) All persons otherwise required by Probate Code section 1460 et seq.

C. When the conservatee has a spouse, the petition shall allege whether any property is community property. If community, the petition should state what portion is to be included in the conservatorship. (See Prob. Code, § 3051.)

D. Children and grandchildren are relatives within the second degree. The petition must allege the existence or the nonexistence of any children or grandchildren and their names, addresses and whether they are minors or adults.

E. Unless the petitioner is a bank, any petition for appointment must be accompanied by the forms required by the Rules of court 7.1050 and the following:

1. Investigator Referral;
2. Duties and Liabilities

The petition will be rejected for filing if required forms are not submitted with the petition. A copy of such forms must also be filed for the court investigator who must review the allegations in the supplemental information. A temporary appointment will not be made unless the petition for permanent conservatorship which is to be filed is accompanied by such supplemental information.

F. Any petition for appointment of conservator must disclose whether the proposed conservator is a private professional conservator (PPC) as defined by Probate Code section 2340.

G. In compliance with the Due Process in Competence Determination Act, the court will appoint a conservator of the estate only if evidence is presented to support a finding of lack of capacity to make decisions or do other acts as required by section 811. In uncontested cases, and until contrary authority is provided, the court will accept as evidence a separate verified declaration attesting to a deficit in at least one of the mental functions as set forth in section 811, which declaration must be attached to the original petition for appointment of a conservator of the estate. The Judicial Council form "Capacity Declaration" in and of itself is not sufficient for this purpose.

(Eff. 1/1/90; Amended 1/1/91; 7/1/96, Rev. 1/1/2000; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003)

Rule 4.121

Registration of Private Professional Conservators

A. A private professional conservator or private professional guardian must be registered per Probate Code Section 2341 before the court will appoint such person as conservator or guardian.

B. Registration will be handled by the Probate Division per the instructions available from that department. The instructions and two fingerprint cards may be obtained from Probate Examining in either Vista or San Diego by any person who needs to register.

C. Upon review of any conservatorship records, if it is determined that any person qualifies as a private professional conservator or private professional guardian and has not registered, the court will require such person to immediately register per Probate Code section 2341 and may suspend powers of that person if they do not register.

D. The Annual Information Statement which must be filed each year by each private professional conservator or private professional guardian is highly confidential and available only to the court personnel who have a need to know. None of the information will be given out to any other person. (Adopted, Eff. 1/1/90; Amended, Eff. 1/1/91; Revised, Eff. 7/1/95; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003)

Rule 4.122

Capacity to Give Informed Consent for Medical Treatment

A. Any petition seeking a determination that the proposed conservatee lacks capacity to give informed medical consent must contain facts to support the finding and must be accompanied by a declaration of a licensed physician, or, where appropriate, an accredited practitioner, as to conservatee's lack of capacity to consent to medical treatment. The "Capacity Declaration" shall be used for this purpose. The provisions of Probate Code section 1881 must be complied with, but if the request for medical authority is part of the petition for appointment of a conservator, properly noticed, and after an interview by the court investigator the proposed conservatee has no objections, paragraph (2) of subdivision B. shall not apply.

B. Medical authority for a limited conservator is granted pursuant to Probate Code section 2351.5, not Probate Code section 2355, and the Petition for Limited Conservatorship may not ask for 2355 authority. (Eff. 1/1/90; Amended 1/1/91; 7/1/96, Rev. 1/1/2000; Renumbered 7/1/2001; Rev. 7/1/2002)

Rule 4.123

Dementia Authority

A. A request for dementia authority per Probate Code section 2356.5, may be contained in the petition for appointment of conservator, a petition for exclusive medical authority, or in a petition asking only for dementia authority.

B. A petition for appointment of conservator which includes such request must be a petition for appointment of conservator of the person, must also include a request for exclusive medical authority and must have sufficient specific examples and allegations to be clear and convincing evidence of dementia as defined by the last edition of Diagnostic and Statistical Manual of Mental Disorders (DSM IV). The mere attachment of form PR-113 will not be sufficient evidence to permit the court to make the necessary findings under Probate Code section 2356.5, subdivisions (b) and (c).

C. Capacity Declaration (PR-32) must be filed in support, but must address each required finding per Probate Code section 2356.5 (f)(3) and therefore an additional declaration of physician must be furnished.

D. A request for dementia authority can be contained in a petition for exclusive medical authority if there is a conservator of the person in place.

E. A request for dementia authority only can be the subject of a petition where there is already a conservator of the person who has exclusive medical authority.

F. Counsel will be appointed to represent the conservatee or proposed conservatee in any case where dementia authority is requested and a written report from that attorney must be filed five days in advance of the hearing before the court acts on the dementia request. (see also Rule 4.129(B))

G. A request for placement in a secured facility must indicate the specific facility and a showing it is the least restrictive placement available.

H. A request to authorize medications must show the specific medications currently prescribed.

I. Dementia authority will not be granted where the petitioner is the proposed conservatee as there is a conflict in a person having sufficient capacity to file a petition and the court finding dementia per DSM IV.

J. Dementia authority will not be granted to a limited conservator as a limited conservatee would not meet the definition for dementia per DSM IV.

K. The court finds that notice required on a petition for appointment of conservator is sufficient notice of a request for dementia authority.

L. A Petition for exclusive medical authority which includes dementia authority, or a petition for dementia authority, requires an order prescribing notice. The court will require 15 days notice, with a copy of the petition, to the conservatee, conservatee's spouse, domestic partner, and relatives in the second degree.

(Eff. 1/1/2000; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002)

Rule 4.124**Independent Powers: Sale of Residence**

A. The court will grant individual powers as authorized by Probate Code sections 2590 and 2591 only in response to specific allegations regarding their necessity.

B. Where power is granted to sell real property, the court requires that the sale be returned to the court for overbidding and confirmation. If independent power of sale of real property is requested, an allegation must be made whether the real property is conservatee's residence, as described in Probate Code section 2540.

C. The independent powers granted must be set forth in the order and in the letters of conservatorship.

D. If conservatee's present or former residence is to be sold, authority must first be obtained from the court. The petition must indicate the conservatee's support or opposition, including whether the conservatee opposed the sale in the past, the necessity for the sale, whether conservatee has the ability to reside therein and alternatives to the sale. In addition, the tax issues are to be discussed, particularly the impact of capital gains tax.

E. The court will consider the petition for authority to sell a residence on an ex parte basis if there are no requests for special notice or if the persons requesting special notice waive notice and it is shown the conservatee does not object or does not have the capacity to object.

(Adopted 1/1/90; Amended 1/1/91; Renumbered 7/1/2001; Rev. 7/1/2002)

Rule 4.125**Consent of Conservator to Act**

When a proposed conservator is not petitioning, written consent of the proposed conservator to act must be on file before the appointment is made.

(Adopted, Eff. 1/1/90; Amended, Eff. 7/1/91; Renumbered 7/1/2001; Rev. eff. 7/1/2003)

Rule 4.126**Court Investigator's Report**

A. When a report is required from the court investigator, a Referral for Court Investigator must be filed with the petition.

B. If the proposed conservatee cannot attend the hearing because of medical inability a "Capacity Declaration" must be filed.

C. No Order Appointing Court Investigator is required because the court has made a general order appointing the San Diego Superior Court investigators for all cases.

D. When the proposed conservatee is the petitioner and attends the hearing, or nominates the

conservator and attends the hearing, no court investigator's report is needed.

E. If it is anticipated that the petitioning proposed conservatee will attend the hearing, but before the hearing becomes unable to attend, the petition must be amended and the referral must be filed with the court investigator. Counsel must call the court investigator at (619) 236-3781 (Central) and (760) 806-6150 (North County) to alert them of the need for an investigation. If this is not accomplished at least 10 days before the hearing date a continuance ordinarily will be required.

F. It is the petitioner's responsibility to make the proposed conservatee available for a court investigation. If the proposed conservatee is not made available, the court investigator will report to the court and the petition may be continued or taken off calendar, at the court's discretion, until such time as the proposed conservatee is made available.

(Eff. 1/1/90; Amended 1/1/91; 7/1/91; 7/1/95; 7/1/96, Rev. 1/1/2000; Renumbered 7/1/2001; Rev. 7/1/2002)

Rule 4.127**Limited Conservatorships**

Upon a petition for appointment of limited conservator, and under proper circumstances, the court may appoint a general conservator for a developmentally disabled person.

(Adopted, Eff. 1/1/90; Renumbered 7/1/2001)

Rule 4.128**Bond Requirements**

A. Cash may be blocked as provided in rule 4.37, and such blocked funds excluded from the bond amount.

B. Bond Review Hearing

If, at the hearing for the appointment of a temporary or permanent conservator of the estate, the proposed conservator does not have sufficient information regarding the proposed conservatee's income or assets to enable the court to set an appropriate bond, the court may appoint the temporary or permanent conservator and continue the hearing to a specified date so that the conservator can provide the required information and a proper bond can be set. Where appropriate, the court may place limitations on the letters of conservatorship until a proper bond has been posted. This rule also applies to appointments of guardians of the estate.

(Eff. 1/1/90, Rev. 1/1/2000; Renumbered 7/1/2001; Rev. 7/1/2002)

Rule 4.129**Appointment of Counsel for Conservatee or Patient**

A. The court will appoint counsel for the person who is the subject of a conservatorship petition as required by law or for good cause

B. Counsel appointed by the court to represent conservatees must prepare and file a written report to the court at least five days prior to the hearing. Said report must:

(1) Make a recommendation as to the issues at hand.

(2) Document the services performed by counsel.

(3) Include a fee request in the prayer.

(4) Include a recommendation regarding the ability or inability of the conservatee or proposed conservatee to pay the fee, in order to enable the court to make a finding regarding such ability or inability, and to order payment by such conservatee or by the County of San Diego.

(5) Make a recommendation whether or not counsel may be discharged. In the case of an appointment under Probate Code Section 2356.5, counsel will not be discharged.

(Eff. 1/1/90, Rev. 1/1/2000; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Rev. eff. 7/1/2003)

Rule 4.130**Successor Conservator**

Appointment of a successor conservator does not require service of a citation or personal service of notice on the conservatee, nor does it require a physician's affidavit of inability to attend the hearing or an 811 declaration per Rule 4.120(G). Unless the petition for appointment of successor states that the conservatee will attend the hearing, it will be necessary to file a Referral for Court Investigator. The investigator must interview the conservatee and file a report before the hearing. The notice of hearing and a copy of the petition must be served on the conservatee, either personally or by mail, at least 15 days prior to the hearing, and other notice given pursuant to Probate Code section 2683.

(Adopted, Eff. 1/1/90; Renumbered 7/1/2001)

Rule 4.131**Conservatorship Assessments**

Probate Code section 1851.5 provides that an assessment will be made against the estate of each conservatee for the cost of any investigation made by the court investigator under appropriate statutes. The assessment for investigations by the court investigator is set by the court. The assessment is due and must be paid immediately upon receipt of the investigator's report. The probate examiner will routinely check for the payment of assessments when any petition in a conservatorship is before the

court and no order will be processed until all assessments are paid unless the court grants a request to defer payment for good cause shown.

(Adopted, Eff. 1/1/90; Amended, Eff. 1/1/91; Revised 7/1/95; 7/1/96; Renumbered 7/1/2001; Rev. 7/1/2003)

Rule 4.132**Investments by Conservator**

A. In accordance with Probate Code section 16040, investments by conservators must be prudent and in keeping with the size and character of the conservatee's estate.

B. The Court will not approve the following:

(1) Unsecured loans.

(2) Loans to relatives.

(3) Bonds or obligations of foreign governments or corporations.

C. The court will not authorize investments in real estate, either by purchase or encumbrance, unless supported by an appraisal by the court-appointed probate referee or other qualified appraiser.

D. A conservator may petition the court for instructions and authority to make a specific investment.

(Adopted, Eff. 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002)

Rule 4.133**Substituted Judgments in Conservatorships
Probate Code section 2580**

A. Where petitioner seeks to establish a trust with conservatorship assets under substituted judgment, the petition must provide that the trust will remain under the continuing jurisdiction of the court and suggest an appropriate bond.

B. The trust instrument must provide that any trustee be bonded; accountings be filed with the court as directed by the court and in any case the first accounting will be filed by the end of the first year and each subsequent accounting will be filed biennially; and there be no "no contest clause".

(Adopted, Eff. 1/1/90; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002, Rev. 1/1/2004)

Rule 4.134**Accounts and Reports**

A. All accounts of conservators and guardians must follow the format prescribed in these rules for decedents' estates and in Probate Code sections 2620 and 1060 unless ordered by the court.

B. Reports of conservators must contain the current address and whereabouts of the conservatee, and describe the conservatee's status and condition.

C. Reports of conservators must reference the amount of the current bond and state whether

additional bond is necessary to cover unblocked personal property plus one year's estimated income.

D. The report must also show any blocked bank accounts.

(Eff. 1/1/90; Amended 1/1/91, Rev. 1/1/2000; Renumbered 7/1/2001; Rev. eff. 7/1/2003)

Rule 4.135

Notices

A. The Probate Code requires that a conservatee receive notice of the hearing on an accounting. However, the court will accept a waiver of notice by the conservatee if the conservatee is shown to be competent to make such a waiver.

B. Notice must be given to a former conservatee or the personal representative of a deceased conservatee upon the settlement of the final account.

(Adopted, Eff. 1/1/90; Renumbered 7/1/2001)

Rule 4.136

Change of Conservatee's Residence

Whenever conservatee's residence is changed, the conservator must promptly file a written "Change of Address" Judicial Council form with the Probate Division.

(Adopted, Eff. 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. eff. 7/1/2003)

Rule 4.137

Routine Court Investigator's Report

When an investigator's report or report of the court appointed attorney for the conservatee is mailed to counsel for the conservator subsequent to the establishment of the conservatorship, counsel for the conservator must promptly respond to any problems pointed out by the investigator or court appointed attorney.

(Adopted, Eff. 1/1/90; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Rev. eff. 7/1/2003)

Rule 4.138

Fees for Conservators and Counsel

A. The court will not grant a fee request without an accounting absent good cause.

B. Fees for court appointed counsel must be requested at the hearing as part of counsels' report. (See rule 4.130B.)

C. Requests for compensation must be in accordance with Rules of Court 7.751 and 7.702.

(Adopted, Eff. 1/1/90; Amended, Eff. 7/1/91; Renumbered & Rev. 7/1/2001; Rev. eff. 7/1/2003)

Rule 4.139

Accountings

A. The first accounting must be for a period not to exceed one year from the date of appointment.

B. Subsequent accountings will be either annual or biennial accountings running from the ending date of the first accounting period.

C. A final account in a conservatorship must set forth a list of assets on hand for distribution and the specific proposed distribution. If distribution is proposed pursuant to Probate Code section 13100, the necessary affidavits must be filed before the court orders distribution.

D. The final account of a conservator must allege whether or not all income and other taxes which became due and payable by conservatee during the period of the conservatorship have been paid.

E. In the final account, an allegation must be made as to whether or not the conservatee or predeceased spouse, if any were Medi-Cal recipients and if so, appropriate notice must be given per Probate Code section 215, unless distribution is to a personal representative of a deceased conservatee.

F. In all cases, notice must be given to all persons entitled to receive property.

G. Appropriate notice to the Department of Health Services must be given if required. That department has four months to perfect its claim.

(Adopted 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2003)

Rule 4.140

Allegations Re Taxes

Reserved for Future Use See rule 4.139D.

(Adopted, Eff. 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Deleted eff. 7/1/2003)

Rule 4.141

Medi-Cal Allegation

Reserved for Future Use See rule 4.139F and G.

(Adopted, Eff. 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Deleted eff. 7/1/2003)

Rule 4.142

Notice Re Final Account

Reserved for Future Use See rule 4.139F and G..

(Adopted, Eff. 1/1/90; Renumbered 7/1/2001; Deleted eff. 7/1/2003)

CHAPTER 20 GUARDIANSHIPS

Rule 4.143

Temporary Guardianships

A. A petition for appointment of temporary guardian must be a separate pleading and may not be filed prior to the filing of a petition for appointment of a general guardian.

B. The court will require a full bond from the temporary guardian of the estate unless waived for good cause.

C. The court will not consider the appointment of a temporary guardian ex parte unless proper showing is made that:

- i.** An immediate necessity exists
- ii.** The parents have received notice or good cause exists to dispense with notice
- iii.** Petitioner knows of no objections to the petition
- iv.** Then minor is residing with the petitioner at the time the request for temporary guardianship is made.

(Adopted 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003)

Rule 4.144

Petition for Appointment of Guardian: Jurisdiction

A. If there is a proceeding regarding the minor pending in Juvenile Court or Family court, counsel must refer to the Guardianship Protocol available in the Probate Business Office.

B. When an appointment is requested for guardianship of the estate only, the petition must be filed in the Probate Court.

C. Any proposed guardian not related to the minor shall disclose if they are serving as guardian for any other minors to whom they are not related.

D. Allegations that parental custody would be detrimental to the minor child, other than a statement of ultimate fact, must not appear in the petition, but may be submitted on a separate document that must be held as a separate confidential document. (Family Code 3041)
(Adopted, Eff. 1/1/90, Amended, Eff. 7/1/96; Renumbered 7/1/2001; Rev. 7/1/2002)

Rule 4.145

Nomination by Minor

When the minor is 12 years of age or older, a nomination of the proposed guardian must be made by the minor. Local Form, "Nomination of Guardian" (PR-125) is available for the purpose.
(Adopted, Eff. 1/1/90; Amended, Eff. 7/1/95; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003)

Rule 4.146

Co-Habitant of Proposed Guardian

A. If the minor resides with the proposed guardian and the proposed guardian is co-habiting with another adult who will share in the physical custody of the minor, the court must presume that the co-habiting adult is a person having care of the minor and a copy of the petition and notice must be served by mail on said spouse.

B. Written consent of the co-habiting adult must be filed with the court.
(Adopted, Eff. 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. eff. 7/1/2003)

Rule 4.147

Requested Waiver of Notice

Reserved for Future Use.

(Adopted, Eff. 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. eff. 7/1/2003)

Rule 4.148

Investigation

A. Probate Code section 1513 requires that, unless waived by the court, in each proposed appointment of guardian, an investigation be made and a report submitted to the court. These investigations in San Diego County will be done by the Family Court Services, Health and Human Services Agency (Guardianship Unit) or the Court Investigator as follows:

(For these purposes, relative is defined by Probate Code section 1513 g).

(1) Guardianship of the Person, and/or Estate-Relative.

(a) Submit Order Directing or Waiving Investigation to Probate Services with petition for appointment. (Fill out order, check #1.)

(b) Call Family Court Services for appointment; (619) 557-2151 in San Diego or (760) 940-4433 in Vista within three days of filing.

(c) Follow directions received from Family Court Services.

(d) Hearings are to be set no sooner than 60 days from filing.

(2) Guardianship of the Person, and/or Estate-Non-Relative.

(a) Per Probate Code section 1542, notice is to be given to the Director of Social Services in Sacramento and to the local agency investigating guardianships.

(b) Submit the Order Directing or Waiving Investigation to Probate Services (Fill out order, check #2.) with the petition for appointment.

(c) Send a second copy of the petition only to Department of Social Services, Guardianship Unit, at the address listed in their instructions. This will expedite assignment for investigation and minimize court continuances.

(d) Hearings are set no sooner than 60 days from filing.

(3) Guardianship of the Estate only-Relative or Non-Relative.

(a) Submit Order Directing or Waiving Investigation to Probate Services. (Fill out order, check #3.) with the petition for appointment.

(b) Send copy of Order Directing or waiving investigation to the Court Investigator to initiate investigation along with a completed Guardianship Questionnaire and fee.

(c) If a waiver of court investigation is requested, submit the "Application for Waiver of Investigation", "Guardianship Questionnaire" and "Order Directing or Waiving Investigation" to the Probate Business Office. (Fill out order, do NOT check a box.)

(d) If waiver is approved, appointment will proceed. If waiver is denied, counsel will receive a copy of the Order Directing Investigation and should contact the court investigator.

3. All guardianship petitions of the person require counsel to send notice to the local agency investigating guardianships. (See Prob. Code section 1516 and 1542.) The actual screening for neglect or abuse will be done by either Health and Human Services Agency or Family Court Services, depending upon which agency is responsible for the investigation of the guardianship of the person.

(4) If waiver of investigation is sought, the request must be made in advance of the hearing to provide sufficient time for review and processing. At least 10 days must be allowed.

B. In the case where a Court Appointed Attorney has been ordered to file a report, the report must be filed with the court no later than five days prior to the hearing.

(Eff. 1/1/90; Amended 7/1/95, Rev. 1/1/2000; Renumbered 7/1/2001; Rev. eff. 7/1/2003)

Rule 4.149

Bond at Appointment and Accounting

A. The court will impose a bond to cover the full amount of the personal property and one year's income or require the funds to be placed in blocked accounts. In a guardianship the relationship of parent does not constitute good cause for waiving bond.

B. The report and account must allege the amount of bond in effect and whether it is sufficient to cover personal property and income, and, where necessary, additional bond suggested.

C. See rule 4.128C. Bond Review Hearing, which also applies to appointment of guardians of the estate.

(Adopted 1/1/90; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002)

Rule 4.150

Additional Powers

A. The court may, on the petition of the guardian of the estate, either at the time of appointment or later, grant additional powers to the guardian as authorized by sections 2590 and 2591 of the Probate Code. Such powers are not granted unless sufficient reason is shown for their necessity. The court will grant only those additional powers necessary or proper under the specific circumstances of each case. The powers so granted must be set forth in the order and in the letters of guardianship.

B. A petition to transfer the minor to another state, once approved by the court, will be continued for a 60 day review. Upon showing a guardianship has been established in the new state of residence, the matter will be taken off calendar.

(Adopted, Eff. 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. eff. 7/1/2003)

Rule 4.151

Investments by Guardian

A. See Rule 4.132.

B. The guardian should also consider the circumstances of the estate, indicated cash needs and the date of prospective termination of the guardianship.

(Adopted, Eff. 1/1/90; Renumbered 7/1/2001)

Rule 4.152

Timely Accounts

The first accounting must be filed not later than one year after appointment and accounts must be filed at least biennially thereafter. The account should be filed with the court as soon as possible after the end of the accounting period, but not longer than three months thereafter.

(Adopted, Eff. 1/1/90; Renumbered 7/1/2001)

Rule 4.153

Required Form of Account

A. Accounts must follow the format prescribed in rule 4.86.

B. Where a guardian accounts for assets of more than one minor the accounting for each minor must be set forth separately within one report.

C. Minors' funds must not be commingled with guardian's or another person's.

(Eff. 1/1/90; Amended 7/1/95; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003)

Rule 4.154

Report to Accompany Accounting

The report of guardian must give the current age, status and whereabouts of minor.

B. The guardian's current address must be set forth in the report.

(Eff. 1/1/90, Rev. 1/1/2000; Renumbered 7/1/2001; Rev. 7/1/2003)

Rule 4.155**Request for Use of Minor's Assets**

A. If a minor has a living parent or receives or is entitled to support from another source, prior court approval must be obtained before using guardianship assets for the minor's support, maintenance or education pursuant to Probate Code section 2422.

B. A request to expend funds may be made at the time of appointment of guardian, in a separate noticed petition, or included in an accounting and report.

C. The petition must set forth in detail the parents' financial inability or other circumstances which in the minor's interest would justify use of the guardianship assets.

D. The request must be for a specific and limited purpose and for a limited period of time.

E. The petition must be accompanied by a statement describing income, expenses, assets and liabilities of any parent and must include the receipt of Social Security if applicable.

(Adopted, Eff. 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002)

Rule 4.156**Fees and Commissions in Guardianships**

The court will not grant a request for fees without an accounting absent good cause.

(Adopted 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003)

Rule 4.157**Final Account**

A. A final account must be made upon a minor's reaching majority. The court will require a final report in all cases. Upon waiver of accounting by the former minor, the court may require the minor to appear at any hearing regarding the waiver of a final account.

(Adopted 1/1/90, Amended, Eff. 7/1/96; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003)

Rule 4.158**Guardian Ad Litem**

A. The court, on its own motion or on the request of an interested person, may appoint a guardian ad litem to protect the interests of a minor in connection with Probate Code matters only.

B. A guardian ad litem may be appointed to represent several persons or interests when no conflict of interest precludes such appointment.

C. The petition must suggest an independent individual to be appointed or request the court make such appointment.

D. The court may award appropriate fees to the guardian ad litem and determine by whom such fees will be paid, usually upon termination of the guardian ad litem's representation.

(Adopted, Eff. 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002)

CHAPTER 21 TRUSTS

Rule 4.159**Accounts**

A. Accounts filed by trustees must conform to these rules and Probate Code Section 1060-1064.

B. The value of the property set forth in the decree of distribution, or a reconciliation thereof, must be the starting balance of the first account.

C. Unless the testator provides otherwise in the will, a trust created by will executed on or after July 1, 1977, is not subject to the continuing jurisdiction of the court and the court will require an accounting and report only when the same has been requested by someone beneficially interested in the trust.

D. Testamentary trust accounts and related proceedings must be filed in the estate case; but an inter vivos trust must be filed as a new proceeding, even if it is the beneficiary of a pour-over will.

(Adopted 1/1/90; Amended, Eff. 7/1/96; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. 1/1/2003; Rev. 7/1/2003)

Rule 4.160**Petition to Determine Title in Trust Matters
(Probate Code Section 850)**

In trust matters filed with the court to determine the title to property under Probate Code Section 850, the following allegations are required to be set forth in the petition:

A. The vesting of the asset at all relevant times;

B. Evidence of any transactions indicating the settlor intentionally removed the asset from the trust;

C. The value of the asset to be transferred.

(Adopted, Eff. 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003)

Rule 4.161**Notice to Beneficiaries**

Notice must be mailed to all vested or contingent beneficiaries pursuant to the Probate Code at least 30 days before the hearing. Notice must be given to the trustee, if the trustee is not the petitioner.

(Adopted, Eff. 1/1/90; Renumbered 7/1/2001)

Rule 4.162**Trusts Established Before Decree of Distribution**

A. Probate Code section 6321 provides that a decedent may designate as beneficiary of a life insurance policy a trustee named in decedent's will. The statutes also apply to certain employment and other benefits which may be payable to such a trustee.

B. A trustee named in a will admitted to probate may be appointed before the decree of distribution is made, upon the filing of a petition. As to such a petition, the court will require 30 days' notice to beneficiaries.

C. Where a vacancy exists in the office of the trustee before distribution, a trustee not named in the will may be appointed upon the filing of a petition and proper notice pursuant to Probate Code section 17200.

D. The order appointing the trustee must contain all the terms of the trust and the trustee must have all the powers and duties in respect to the trust corpus set forth in the order.

E. Any matters governing the trust not specifically covered by these sections must be governed by the provisions of Probate Code section 15000, et seq.

F. If no trustee claims the trust corpus or can qualify to receive the same and there is no indication in the will as to where the proceeds are to go, a petition to determine heirship may be filed to determine to whom distribution shall be made. (Adopted, Eff. 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2002)

Rule 4.162A**Special Needs Trusts**

A. With respect to Special Needs Trusts and Trusts sent to the Probate Court for review pursuant to San Diego Superior Local Rules, Division II, 2.37(c), the following must be included in the trust:

1. Provisions for appointment of successor trustee on approval of the Probate Court.

2. Bond requirement for all trustees except corporate fiduciaries

3. The requirement of an accounting to the beneficiary, and to the Probate Court if the trust is to be submitted to the the Probate Court's jurisdiction.

4. A payback provision must be inserted as required by 42 USC 1396(d) (4) (a).

5. Notice requirements on termination or death of beneficiary, and for any additions to the trust must be included.

6. Dispositive provisions must include disposition to residual beneficiaries after payback required by 42 USC 1396(d) (4) (a).

B. Once the Trial Court has sent the trust to the Probate Court for review, it will be assigned to an Examiner for review and processing.

C. If the Probate Court approves the Special Needs Trust or Trust, a determination will be made whether the trust must be returned to the Probate Court to be brought under the Probate Court's jurisdiction. The Trial Court will make an appropriate Order thereon, and the trustee of the newly established trust must file a "Review of Compliance with Probate Code Section 3602 or 3611" with the Probate Court within 60 days.

D. A Special Needs Trust or Trust brought under the jurisdiction of the Probate Court will be assigned a new Probate case number and set for hearing. First appearance fees will apply. Any further trust proceedings and bonds must be filed under the new Probate case number.

E. A Special Needs Trust or Trust established by Probate Code Section 2580 must include the same requirements as listed in 4.133 of these rules and as listed in subsection (A) (1-6) above. (New 7/1/2003)

**CHAPTER 22
MISCELLANEOUS****Rule 4.163****Withdrawal of Counsel of Record**

A. Counsel wishing to withdraw from a probate proceeding as counsel of record may file a petition seeking such relief, but must have a citation issued on such motion or petition directing the representative to appear before the court to show cause why said petition or motion should not be granted. 15 days personal service of the citation and copy of the motion is required.

B. All petitions to be relieved as counsel must include the client's last known address at or near the time of filing.

C. If the petition is granted, notice of an order relieving counsel must be served on the client and all parties in the absence of a specified waiver of such notice.

D. The filing in the case file of a substitution in pro per without prior court approval will not effectively relieve the counsel of record. Such counsel will only be relieved by substitution of another counsel or by court order upon showing that the person wishing to act in pro per is able to perform the necessary duties and file necessary documents without legal representation.

(Adopted, Eff. 1/1/90; Amended, Eff. 7/1/91; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003)

Rule 4.164**Appointment of Probate Referees**

A. Probate referees will be appointed in rotation.

B. A probate referee may be designated out of rotation where the property has already been appraised by the probate referee or interests in the

property are part of two pending proceedings. Examples of such proceedings would be the conservatorship of husband and wife, simultaneous deaths or death of husband and wife within one year of each other, decedent's estate following conservatorship, guardianships of siblings and court proceedings following non-judicial proceedings.

C. A declaration must be presented with the order designating probate referee which sets forth the relevant circumstances.

(Eff. 1/1/90, Rev. 1/1/2000; Renumbered 7/1/2001; Rev. 7/1/2002, Rev. 7/1/2003)

Rule 4.165

Ready Matters

A matter is considered "ready" when the file is in order, proper notices have been given and all documents which must be filed before the matter can be heard have been filed with Probate Examining not later than 12:00 noon, two court days preceding the hearing. Any matters not "ready" are subject to a continuance on request or appearance of counsel, or to be taken off calendar if counsel does not appear.

(Adopted, Eff. 1/1/90; Renumbered 7/1/2001)

Rule 4.166

Settlements Involving Charities

The Attorney General is a party to and is entitled to notice of probate matters involving interests of charities. Attention is directed, for example, to Government Code section 12591, as well as to the Probate Code.

(Adopted, Eff. 1/1/90; Renumbered 7/1/2001; Rev. 7/1/2003)

Rule 4.167

Dismissal of Proceedings

In most instances, proceedings pending in the Probate Court, to which a file number with a prefix "P" has been assigned, may not be dismissed, either with or without prejudice. Before attempting to dismiss a probate proceeding, specific authority must be submitted and the approval of the probate judge must be obtained.

(Renumbered 7/1/2001)

Rule 4.167A:

Declaratory Relief Petitions (Probate Code Section 21320)

A. A copy of the proposed, unsigned and unverified petition marked "proposed" below the caption, must be attached to the 21320 application which is set for hearing.

B. If the court determines the proposed petition or a portion thereof would not violate the no contest clause contained in the instrument, a duplicate original of the proposed petition, or the approved

portion thereof, signed and verified must be filed with the court and set for hearing. The wording "proposed" must be deleted from the petition to the filed.

C. Notice of the proposed petition, once filed with the court is to be given as set forth in the applicable code section for that petition.

(Adopted eff. 7/1/2002; Rev. 7/1/2003)

CHAPTER 23 CONTESTED MATTERS

Rule 4.168

Introduction

When written objections are filed to a petition or other pleading seeking affirmative relief in the Probate Court of either Central or North County Division (herein "Probate Court"), the matter becomes a "contested matter" as the term is used in these rules. These rules apply to all contested matters. They supplement applicable general statutes and other rules of court and are intended to further the policies of the Legislature and the San Diego Superior Court for the prompt completion of probate administration and efficient resolution of disputes.

(Adopted, Eff. 1/1/93, Amended, Eff. 7/1/96; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003)

Rule 4.169

Filing of Petitions and Contests and Setting Contested Matters for Hearing

All petitions, will contests and other pleadings seeking affirmative relief or adjudication by the Probate Court must be filed as soon as the petitioner knows of facts establishing a claim or the right to the requested relief. All such matters must be set for hearing by the clerk of the court as follows:

A. By statute or Rule of Court.

B. **Notice not Prescribed.** If the time for notice of hearing on a particular matter is not set forth in a statute or a rule of court, the time for notice of hearing must be 30 days.

C. **Will Contests.** A probate summons must be presented by the contestant and issued by the court at the time of filing of a will contest. A will contest filed before admission of the will to probate constitutes an objection to the petition to admit the will, and the hearing on the petition to admit the will must be continued to a date no less than 30 days from the date of filing the will contest, in order to allow sufficient time to complete service in the will contest. If all service, including personal service of the summons as required by law, is not completed by the date of the continued hearing on the petition to admit the will, contestant must file a Certificate of Progress (on the form approved by the Superior

Court) at least two court days prior to the hearing. If service is not completed prior to the continued hearing, the court at the hearing may further continue the matter or may impose sanctions, including the dismissal of the will contest, pursuant to the civil rules of San Diego Superior Court (Division II). When service has been completed, the will contest will be set for trial or short cause hearing pursuant to these rules. The petition to admit the will may be continued until the date of trial or short cause hearing on the will contest. (Adopted, Eff. 1/1/93; Amended, Eff. 7/1/95; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003)

Rule 4.170**Service of Notice**

All notice requirements on contested matters, including personal service when required, must be completed prior to the date of the hearing (whether the hearing date originally assigned to the matter by the clerk of the court or a later date if the matter has been continued). If a party on whom personal service is required has not been served timely, a Certificate of Progress (on the form approved by the Superior Court) must be filed at least two (2) court days prior to the hearing. (Adopted, Eff. 1/1/93; Renumbered 7/1/2001; Rev. 7/12/2002)

Rule 4.171**Filing of Objections**

Objections, including grounds of opposition, to any petition or other pleading filed in Probate Court must be set forth in writing and filed either as required by statute or, in the absence of specific statutory requirements, at least two court days before hearing on the petition or pleading. If written objection has not been filed in accordance with this rule, the matter will either be continued to allow compliance with this rule or be decided by the court as an uncontested matter if the court, in its discretion, determines a party has been dilatory in complying with this rule. (Adopted, Eff. 1/1/93; Renumbered 7/1/2001)

Rule 4.172**Determination of Contested Matters**

A. General. Contested matters will be determined as set forth herein. At the earliest appropriate hearing after a contested matter is at issue, the court will determine the type of hearing required, the length of the hearing and the manner of disposition.

B. Submission Without Evidentiary Hearing. If all parties agree in writing or on the record in open court, the court may decide the matter based on the pleadings, evidentiary materials filed prior to

the conclusion of the hearing, and the arguments of counsel, or as otherwise agreed.

C. Short Cause Matter Hearing. If the court determines that the matter will require an evidentiary hearing of three hours or less (a "hearing"), the court may establish guidelines to govern discovery proceedings, if any are required, and may set the matter for hearing as a "short cause" matter.

If counsel desire to submit trial briefs, they must be filed at the business office of the Probate Court and faxed (in accordance with the California Rules of Court, rule 2008) or personally served on opposing counsel no later than 4:30 p.m. five court days prior to the date set for the short cause hearing.

Due to the "Short cause" nature of this hearing, the court will not entertain, receive or read responsive pleadings to said trial briefs. The trial briefs submitted are deemed sufficient to allow the parties the opportunity to state their positions regarding the contested issue(s) to be addressed at the short cause hearing. The provisions of rule 4.180 do not apply to short cause hearings.

D. Trial. If the court determines that the matter will require an evidentiary hearing of more than three hours (a "trial"), the court may set the matter for a case management conference, (see rule 4.174 below).

E. Other Procedural Orders. If none of the foregoing procedures are appropriate for the matter before the court, the court may make any other procedural orders the court deems appropriate. (Adopted, Eff. 1/1/93; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002)

Rule 4.173

This section intentionally left blank. Rules have been incorporated into Rule 4.172 above. (Eff. 1/1/93; Amended 1/1/96, Renumbered 7/1/2001; Repealed 7/1/2002)

Rule 4.174**Meet and Confer, Joint Case Management Report**

If a contested matter is set for a case management conference, counsel must:

A. Meet and confer no later than 20 days before the case management conference.

B. File with the court a "Case Management Statement" (CM-110) as Required by Rules of Court 212 - FAILURE TO COMPLY WITH THIS REQUIREMENT MAY RESULT IN SANCTIONS BEING IMPOSED PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 575.2.

(Adopted 1/1/93; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003)

Rule 4.175

This section intentionally left blank.

(Adopted, Eff. 1/1/93; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003)

Rule 4.176**Case Management Conference**

At the case management conference, the court may take any one or more of the following actions:

A. Determine whether or not all applicable procedures have been complied with and, if not, order appropriate remedial action, including the imposition of sanctions considered appropriate in the court's discretion;

B. Set the following dates based upon review of the "Case Management Statement" (CM-110) and the representations of counsel:

1. Trial date;
2. Joint disposition conference date;
3. Discovery cut-off date;
4. Law and motion cut-off date;
5. Dates for the exchange of experts;
6. Settlement conference date, if requested

(See rule 4.179);

C. Make appropriate assignments and orders upon approval of a written agreement to refer the dispute to a temporary judge or to arbitration (Prob. Code, §§ 9620-9621) or to a Special Master or Referee (Prob. Code, § 1000; Code Civ. Proc., §§ 638-645.1).

D. Dispense with any of the procedures provided for herein for good cause.

E. Direct counsel to submit an order setting forth the dates and directives of the court.

(Adopted, Eff. 1/1/93, Amended, Eff. 7/1/96; Renumbered 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003)

Rule 4.177**Joint Trial Statement**

No later than five days prior to the joint disposition conference, counsel must meet and confer in person to prepare in good faith a Joint Trial Statement. The Joint Trial Statement must contain the following:

A. Summary Statement of Facts, including, where applicable, the following: date of decedent's death and dates of wills, codicils and other operative documents; identification and inclusive dates of appointment of the fiduciary (administrator, executor, conservator, trustee, etc.); names of the parties and their counsel; dates and substance of prior relevant court orders; identification of pleadings previously filed which are relevant to the action; a summary of the case so as to apprise the court of the nature of the action.

B. Statement of Uncontested Material Facts.

C. Statement of Contested Material Facts.

D. Statement of Contested Material Issues.

Counsel must set forth a concise statement and comprehensive discussion of each contested issue, a list of all documents (or other tangible evidence) to be offered at the time of trial regarding each issue and a summary of the content of each such document, as required by the Court. Each contested item of an account must be specifically identified. Counsel shall also provide as an exhibit a copy of each appraisal and report of an expert to be offered at the time of trial.

NOTE: FAILURE TO COMPLY WITH THIS REQUIREMENT MAY RESULT IN AN ORDER EXCLUDING THE DOCUMENT, SCHEDULE, SUMMARY, REPORT OR APPRAISAL, OR TESTIMONY OF THE EXPERT AT TRIAL.

E. List of Witnesses Indicating Whether Each Witness is a Percipient or Expert Witness. Except for impeachment witnesses, the Court may, in its discretion, refuse to permit any witness to testify who is not listed.

F. Index of Exhibits. Counsel must pre-mark and jointly index all exhibits numerically as court exhibits. The index must set forth the following as to each exhibit: exhibit number; by whom offered; a description of each exhibit sufficient for identification; whether the parties have stipulated to admissibility, and, if not, the legal grounds for objections to admissibility. Exhibits shall be numbered serially, as court exhibits, beginning with the number "1" (one); a block of exhibit number may be allocated to each party. If discovery, such as depositions, requests for admissions, interrogatory responses or any other form of discovery responses, is to be used in lieu of live testimony at trial, such discovery must be set forth in the exhibit index together with the legal grounds for objections to admissibility. Counsel must also comply with the provisions of Code of Civil Procedure section 2025, subdivisions (1) and (u) with respect to the anticipated use of videotaped depositions. Counsel must prepare and exchange a written transcript of any other audio and/or video presentations intended to be used at trial in accordance with the California Rules of Court, rule 303.5. FAILURE TO COMPLY WITH THESE REQUIREMENTS MAY RESULT IN AN ORDER EXCLUDING DOCUMENT(S) AND/OR EXHIBITS AT TRIAL.

G. Stipulations Regarding Admission of Evidence and Summaries of the testimony.

H. All Points and Authorities (legal arguments) on which counsel intends to rely.

I. A statement of the specific relief requested. The relief may be requested in the alternative.

J. The Joint Trial statement must be signed by all counsel (and litigants appearing in propria persona) who will appear and participate in the trial. (Adopted 1/1/93, Amended 7/1/96; Renumbered 7/1/2001. Rev. 7/1/2002; Rev. 7/1/2003)

Rule 4.178

Joint Disposition Conference; Sanctions

The Joint Trial Statement must be presented to the court at the joint disposition conference.

A. Separate reports will not be accepted. The completed report must be presented to the judge at the scheduled conference. The function of the joint disposition conference is to assure that the matter is ready for trial.

B. Counsel completely familiar with the case and possessing authority to enter into stipulations must be present at the scheduled hearing; however, clients need not appear unless specifically ordered by the court. Orders made will be binding on trial counsel and will not be subject to reconsideration due to counsel's unfamiliarity with the case at the time of the joint disposition conference.

C. If the court determines that a party, or counsel, has failed to reasonably comply with these rules, including the diligent preparation of a Joint Trial Statement, the court may impose appropriate sanctions against that party or counsel including a summary determination of any contested issues in accordance with the other party's papers filed in compliance with these rules, the levy of sanctions pursuant to Code of Civil Procedure section 575.2, the issuance of citations or bench warrants, or any other appropriate action.

(Adopted, Eff. 1/1/93; Revised, Eff. 7/1/95, 7/1/96; Renumbered & Rev. 7/1/2001; Rev. 7/1/2002)

Rule 4.179

Settlement Conference

Upon filing a written stipulation that the probate judge may act as both settlement judge and trial judge if the matter is not settled, which is signed by all parties and their attorneys of record the probate judge in the central division will preside at settlement conferences unless any party requests that another judge be designated or the probate judge determines it would be inappropriate under the circumstances. If another judge is to be designated, an effort will be made to select a former probate judge or a judge with extensive probate experience. Counsel may also, by unanimous approval, accept as settlement judge one or more temporary judges designated by the probate judge. If all parties, after the case management conference, agree upon a settlement conference to assist in resolving the matter, a settlement conference may be set ex parte.

Except in special circumstances, the probate judge in the North County Division will not hear settlement conferences. Where a judicial settlement conference has been agreed to or ordered by the probate judge, the probate department will assist the parties in arranging for a judge to preside over the settlement discussions.

(Adopted, Eff. 1/1/93; Renumbered 7/1/2001; Rev. 7/1/2002)

Rule 4.180

Trial Briefs and Motions *in Limine*

A. All motions *in limine* (as authorized by law) and trial briefs must be filed with the clerk of the trial court and faxed (in accordance with the California Rules of Court, rule 2008) or personally served on opposing counsel no later than 4:30 p.m. five court days prior to the date set for trial. Opposition pleadings to *in limine* motions must be filed and faxed (in accordance with the California Rules of Court, rule 2008) or personally served on opposing counsel no later than 12 noon of the day prior to the date set for trial.

B. Prior to the time the matter is called for trial, the parties must provide the clerk of the trial court with a final joint exhibit list, which must include appropriate summaries, as set forth hereafter. The parties must also provide two joint exhibit binders, one for the court and one for the witnesses, containing a complete set of all exhibits. The exhibits must be marked to correspond to the joint exhibit list. Copies of exhibits to be offered by the petitioner must not be duplicated by the respondent.

C. If ordered by the court at the Case Management Conference, each party seeking a surcharge or to justify items of an account to which objections have been made in the Joint Trial Report must prepare a summary of the documentary evidence supporting the request for surcharge or the accounting of contested items (e.g., canceled checks, receipts, bills, etc.). This summary must be included in the final joint exhibit list and exhibit binders.

(Eff. 1/1/93, Rev. 1/1/2000; Renumbered 7/1/2001; Rev. 7/1/2002)

Rule 4.181

ADR and Mediation Statement of Purpose

Contested estate, trust, conservatorship and other matters covered by the Probate Code are uniquely appropriate for alternative dispute resolution and supervised mediation in the interests of prompt, efficient and economical dispute resolution. Therefore, the court adopts the within Probate Code Mediation Program, which must be subject to the following special rules. Except to the extent otherwise specified, all other provisions of Division IV, Section One of the San Diego Superior

Court Rules must apply to matters subject to this mediation program. The rules set forth below must be integrated into and must be a part of the rules relating to contested matters in probate.
(Adopted eff. 7/1/2001; Rev. 7/1/2002)

Rule 4.182

Statements and Documents not Admissible Evidence

All responsive pleadings and all other documents filed with the court concerning mediation under these rules, and all matters disclosed verbally concerning any such mediation, must not be admissible evidence in any later contested proceeding between the parties solely by reason of their disclosure under these rules. The law governing statements and documents disclosed in mediation as set forth in Evidence Code section 1119 must expressly apply to all documents and statements filed with or made to the court under this mediation program.

(Adopted eff. 7/1/2001; Rev. 7/1/2002)

Rule 4.183

Alternative Dispute Resolution in Contested Probate Matters.

A. Statement of Purpose.

Contested estate, trust, conservatorship, guardianships and other matters covered by the Probate Code are uniquely appropriate for court-supervised Alternative Dispute Resolution ("ADR") in the interests of prompt, efficient and economical dispute resolution. The Court states that mediation is the preferred method of dispute resolution and adopts the within Probate Court-Supervised ADR program in contested probate matters.

B. ADR Defined

ADR is a term covering the full range of techniques designed to resolve disputes short of trial in the courts. Certain cases will always have to be tried in the courts. ADR complements the court system by making methods available to resolve disputes at less cost, in less time, and often without the win-lose outcome that characterizes conventional litigation.

ADR includes, but is not limited to, mediation, a referee or special master appointed by the court pursuant to Code of Civil Procedure sections 638-645.1, binding arbitration, a judicially supervised settlement conference, a two-attorney settlement panel in North County, and neutral evaluation.

C. Court Ordered Alternative Dispute Resolution Absent Opposition

At the first hearing after a probate matter becomes contested, the court shall order the matter to ADR unless one or more of the parties objects.

D. Court Determination Re ADR Upon Opposition Being Filed

At the time of the ADR assignment, a party may orally or in writing object to the need for ADR, the method of ADR selected, the selection of the neutral person or neutral panel, the method of payment of the costs of ADR, or the timing of ADR. The court has the discretion to order ADR, proceed pursuant to local rule 4.168, or defer the order to ADR until discovery has been completed. In ordering ADR the court may restrict discovery until the completion of ADR. The court may also order that the case proceed in accordance with Rule 4.168, *et seq.* re contested probate matters. The order for ADR may be made by a minute order or by a formal order at the request of any party. Additionally, the court at any time may order the parties to ADR as a method of attempting to resolve the matter. If ADR is unsuccessful, the court shall allow unrestricted discovery.

(Effective 1/1/2004)

Rule 4.184

Parties Select Mediator; Probate Mediation Panel

Upon ordering the parties to ADR, the parties and their counsel must jointly select a qualified mediator or ADR facilitator to conduct the ADR. As a resource, the court must maintain and have available a directory of trained mediators (the "Probate Mediation Panel"). One category of mediators in the directory must consist of trained mediators who either have significant probate experience, or are retired judges. A second category of mediators in the directory must consist of trained mediators without significant probate experience. If the parties cannot agree on a mediator or ADR facilitator, they must attempt to determine a mechanism whereby the mediator or ADR facilitator may be selected; providing, however, that in the event the parties cannot agree, the court may appoint a mediator or ADR facilitator.

(Adopted eff. 7/1/2001; Rev. 7/1/2002, Rev. 1/1/2004)

Rule 4.185

Fiduciary Pays Costs and Fees

Absent the agreement of all interested parties, and subject to 4.186 of these rules, the fiduciary (i.e., the executor, conservator, trustee or guardian of the estate) must pay the costs and fees of ADR. For purposes of this rule, the term "costs and fees of ADR" must include only those costs and fees directly relating to the ADR service and must not include the attorneys' fees and costs of the parties.

(Adopted eff. 7/1/2001; Rev. 7/1/2002, Rev. 1/1/2004)

San Diego County Superior Court Rules

Rule 4.186

Discretion to Allocate Costs and Fees of ADR

On a noticed petition filed by any party, the court may, in its discretion, allocate the costs and fees of ADR to one or more of the interested parties to the contested matter; and providing further, if the court determines any party acted in bad faith or unreasonably in the ADR process, the court may charge such costs and fees to such party.

(Adopted eff. 7/1/2001; Rev. eff. 7/1/2003, Rev. 1/1/2004)

Rule 4.187

ADR Statement Re: Impartiality

Every person who conducts an ADR pursuant to these Rules must, as soon as practicable, disclose to the parties any facts that might reasonably cause any party to entertain a doubt that such person would be able to be impartial. ADR facilitators shall comply with all applicable disclosure standards, including, but not limited to, those found in California Rules of Court, rule 1580 *et seq.*

(Adopted eff. 7/1/2001; Rev. 7/1/2002, Rev. 1/1/2004)

Rule 4.188

Continuance Pending Completion of ADR

Upon ordering a matter to ADR the court may continue the proceeding to a date when ASR shall be completed, or may set the matter for hearing, or trial, as provided in rule 4.172. The court may either continue the matter for further mediation efforts or, if the court concludes further efforts at mediation are not warranted, the court may set the matter for such further proceedings the court deems appropriate.

(Adopted eff. 7/1/2001, Rev. 1/1/2004)

Rule 4.189

Application and Compliance Requirements for Probate Mediation Panel

To be included as a member of the Probate Mediation Panel, an applicant must:

Have completed a 25 hour Basic Mediation Training course approved for MCLE credit; and

Be familiar with the provision of California Evidence Code sections 115 through 1128, Code of Civil Procedure sections 1775 through 1775.112 and California Rules of Court sections 1630 through 1639, recognizing some of the foregoing rules may not be directly applicable to probate court mediation arrangements.

(Adopted eff. 7/1/2001; Rev. 7/1/2002)

Rule 4.190

Application and Compliance Requirements

Application: Each applicant requesting appointment to the Probate Mediation Panel must execute under penalty of perjury and file an application certifying that he or she has satisfied the requirements of rule 4.189.

Filing Fee: Each application must be accompanied by a \$100.00 filing fee made payable to the San Diego County Bar Association and by a one-page resume for inclusion in the court's directory.

Annual Compliance Statement, Renewal Fee and Program Administration: Each member of the Mediation Panel must file an annual Compliance Statement on or before the 15th day of January of each calendar year and must pay an annual renewal fee of \$100.00 as a condition to continued inclusion on the Mediation Panel. Applications for admission to the Mediation Panel and Annual Compliance Statements must be obtained by written request to the San Diego County Bar Association, ATTENTION: PROBATE MEDIATION PROGRAM, at 1333 Seventh Avenue, San Diego, California 92101.

(Adopted eff. 7/1/2001, Rev. 7/1/2002)

San Diego County Superior Court Rules

APPENDIX I JUDICIAL COUNCIL FORMS

DECEDENTS ESTATES

Form #	Year	Description or Title
DE-111	03	Petition, for Probate (Decedents dying after December 31, 1984)
DE-221	00	Petition, Spousal Property
DE-260	98	Petition, Report of Sale (Real Property)
DE-270	98	Petition, Ex Parte; Sale Securities (and Order)
DE-275	98	Petition, Ex Parte; Sale Personal Property (and Order)
DE-310	98	Petition, Determine Succession to Real Property
DE-350	02	Petition and Order for Appointment of Guardian Ad Litem
DE-140	98	Order, for Probate
DE-226	03	Order, Spousal Property
DE-265	03	Order, Confirming Sale (Real Property)
DE-315	03	Order, Determining Succession to Real Property
DE-200	98	Order, Prescribing Notice
DE-120	98	Notice of Hearing (Probate)
DE-121	98	Notice of Petition to Administer Estate
DE-157	98	Notice of Administration to Creditors
DE-122	98	Citation and Proof of Service
DE-125	98	Summons Probate
DE-131	98	Proof of Subscribing Witness (Decedents Dying after December 31, 1984)
DE-135	98	Proof of Holographic Instrument
DE-147	02	Duties & Liabilities of Personal Representative
DE-150	98	Letters
DE-160	03	Inventory & Appraisal
DE-161	98	Inventory & Appraisal (Attachment)
DE-165	98	Notice of Proposed Action (Objection-Consent)
DE-166	98	Notice of Proposed Action, Waiver of and Revocation of Waiver
DE-172	98	Creditor's Claim (Estates after June 30, 1988)
DE-174	00	Creditor's Claim, Allowance or Rejection
DE-305	03	Affidavit re Real Property of Small Value
DE-154	98	Request for Special Notice

San Diego County Superior Court Rules

GUARDIANSHIPS AND CONSERVATORSHIPS

Form #	Year	Description or Title
GC-110	98	Petition, Appointment Temporary (Guardianship or Conservatorship)
GC-210	01	Petition, Appoint Guardian Minor
GC-310	03	Petition, Appoint Conservator
GC-060	98	Petition, Confirm Sale Real Property (G or C)
GC-070	98	Petition, Ex Parte Sell Securities (and Order G or C)
GC-075	98	Petition, Sale Personal Property (and Order) (G or C)
GC-380	98	Petition, Give Consent for Medical Treatment
GC-140	98	Order, Appointing Temporary Guardian or Conservator
GC-240	98	Order, Appointing Guardian
GC-340	02	Order, Appointing Conservator
GC-065	03	Order, Confirming Sale
GC-330	98	Order, Appointing Court Investigator
GC-385	98	Order, Authorizing Conservator to Consent to Medical Treatment
GC-021	98	Order, Dispensing with Notice (G or C)
GC-022	98	Order, Prescribing Notice
GC-020	98	Notice of Hearing (G or C)
GC-320	98	Citation for Conservatorship and Proof of Service
GC-150	03	Letters, Temporary (G or C)
GC-250	98	Letters, Guardianship
GC-350	03	Letters, Conservatorship
GC-211	98	Consent of Guardian, Nomination, Waiver of Notice
GC-335	98	Capacity Declaration
GC-040	03	Inventory & Appraisal (G or C)
GC-041	98	Inventory & Appraisal, Attachment (G or C)
GC-050	02	Notice of Taking Possession or Control of an Asset
GC-051	02	Notice of Opening or Changing a Guardianship or Conservatorship Account or Safe Deposit Box
GC-080	00	Change of Residence Notice
GC-085	00	Petition to Fix Residence Outside the State of CA
GC-090	00	Order Fixing Residence Outside California
GC-205	01	Guardianship Pamphlet
GC-212	01	Confidential Guardian Screening Form
GC-248	01	Duties of Guardian
GC-251	03	Confidential Guardianship Status Report
GC-255	98	Petition for Termination of Guardianship
GC-260	98	Order Terminating Guardianship
GC-312	01	Confidential Supplemental Information
GC-313	03	Attachment Requesting Special Orders Regarding Dementia
GC-314	01	Confidential Conservator Screening Form
GC-348	02	Duties of Conservator and Acknowledgment of Receipt of Handbook
